

BOARD OF HEALTH MINUTES
January 9, 2012

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

ACCEPTANCE OF MINUTES

Mrs. Giroux made a motion to accept the Meeting Minutes of November 7, 2011. Mr. Kane seconded. So voted unanimously.

CORRESPONDENCE

Ban on Trans Fats

Mrs. O'Rourke stated the first item under correspondence is the Ban on Trans Fats.

Mr. Berube explained that an email was sent by Joanne Caruso to the Board of Health office regarding Trans Fats. She is asking the Board of Health to take some action and look into banning Trans Fats in Billerica. A number of towns have already initiated and banned Trans Fats. Mr. Berube explained that he asked Health Agent, Gary Courtemanche to do some research and provide the Board with some materials on Trans Fats. Mr. Berube also asked Gary to make up a survey to send out to all the Food Service Establishments (FSE) and gage what the response would be. Gary is present to give a brief explanation of some of the materials that he has provided the Board with.

Gary Courtemanche, Billerica Health Agent introduced himself. Mr. Courtemanche explained that the memo explains what Trans Fats is and why we are looking at it. Trans Fats are the worst kind of fats that you can use. Over the last several years research has shown a high correlation between coronary heart disease and the use of cooking oils containing hydrogenated oil. Hydrogenated oil releases Trans Fats, it makes oil last a lot longer and it does not break down as fast. Mr. Courtemanche explained that he included a Cardiovascular Health Report for Billerica residents over a 3 year period

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from 2006-2008. There are about six (6) communities in Massachusetts that have already banned Trans Fats. I have included a copy of the survey that will be sent out to all the FSE making them aware of what Trans Fats is and asking them what they use for cooking oil. 95%-98% of the restaurants have already stopped using Trans Fats. A lot of the Chinese restaurants cook with peanut oil or canola oil, which is high in fat but contains no Trans Fats. The last question on the survey is if you are Trans Fat free do you want it noted on the Billerica website. I don't think this going to be a major problem. When I have all the results compiled from the survey I will provide the Board Members with a copy of the results. As I am doing my inspections I check to see what kind of oil they are using. If the label says partially hydrogenated oil then it has Trans Fat. Christine West, the Public Health Nurse is going to do an educational piece for the residents in town.

Mrs. O'Rourke asked what happens if they are not using Trans Fat free oil. Are we going to penalize them?

Mr. Courtemanche replied that we will have to decide what kind of enforcement action we want to take. Most of establishments have two stages for the food establishments. Phase I is for food service establishment and Phase II is for the bakeries. This does not include food that is sold for retail.

Mrs. O'Rourke asked if the Board Members had any questions about Trans Fats.

Mrs. Giroux asked about the schools.

Mr. Courtemanche explained that recently adopted nutrition standards by the State will eliminate Tans Fats from schools starting in the 2012-13 school year.

Mrs. Giroux asked why are we doing this. As an adult isn't it a matter of choice that as long as the information is available? In my opinion I don't think we should issue a fine.

Mr. Courtemanche replied at this time we are just gathering information.

Mr. Kane asked do you have a timeline, I don't see a please respond by on the memo.

Mr. Courtemanche replied the survey will be sent out next week and the report will be completed by next month.

Mr. Berube explained that once the survey has been completed we will provide a report to the Board. The Board can then decide how they want to proceed with the information. We don't have to promulgate any new regulations. We can set up a voluntary program to encourage the food establishments to go Trans Fat free and recognize them in some manner. When the survey is completed we will provide that information to the Board with various options.

BOARD OF HEALTH BUSINESS

Health Department Activity Reports

Mrs. O'Rourke stated the first item under Board of Health Business is the Health Department Activity Reports.

Copies of the Health Department Activity Reports for the months of November and December have been included in the Boards package.

Mrs. O'Rourke stated the first report is from the Public Health Nurse, Christine West. Mrs. O'Rourke asked the Board Members if they had any questions.

The Board Members did not have any questions.

Mrs. O'Rourke stated the next report is from Health Agent, Gary Courtemanche.

Mr. Berube stated Gary is present to give a brief summary of his activities.

Mr. Courtemanche explained that he is getting more involved with the Upper Merrimack Valley Public Health Coalition. I attended a site visit at the Shaffer Landfill. I conducted a plan review for the new health club, Get In Shape For Women which will be opening at 700 Boston Road. The construction at Cumberland Farms is coming along. The exterior grease trap has been installed at Jade Pacific and it is running well. Sherwood Industrial mobile food truck has paid the fine and a new mobile food truck permit has been issued. The debris has been cleared up at the Tradesman Industrial Park, 100 Billerica Avenue. The owner will be coming before the Board to seek a variance regarding the ABC fill. Mr. Courtemanche explained that he would answer any questions the Board may have regarding the complaints.

Mrs. O'Rourke asked the Board Members if they had any questions regarding Gary's report.

Mrs. Giroux commented that Gary's report was very detailed. Mrs. Giroux thanked Mr. Courtemanche.

Mrs. O'Rourke stated the last report is from Health Agent, Phavy Pheng.

Mr. Berube explained that most of Phavy's complaints are for junk and debris. There are some housing cases and a few odor complaints.

Mrs. O'Rourke asked what is happening at 218A and 218B Nashua Road.

Mr. Berube replied that the heating issues at 218A and 218B have been resolved with the Fire Department and the Board of Health. The only heating issue that has not been resolved is at 220 Nashua

Road. The Fire Prevention Bureau is still investigating that complaint.

Mrs. O'Rourke asked if the Board Members had any other questions regarding Phavy's report. The Board Members did not have any questions.

Healthy Communities Tobacco Control Program – Compliance Check

Mrs. O'Rourke stated the next item is Healthy Communities Tobacco Control Program, Compliance Check.

Mr. Berube explained that Ron Beauregard from Healthy Communities is present to give a report on the compliance checks. Included in the Board's package is a copy of the violation from Fill N' Chill at 653 Boston Road.

Ron Beauregard, Healthy Communities Tobacco Control Program identified himself. Mr. Beauregard stated that he would like to congratulate the Town of Billerica for only having one violation. That is very good for a town that has not had a tobacco control program for quite some time. We have already done seventeen (17) compliance checks and found that only one (1) establishment had a sale. There are about twelve (12) establishments left to check. I have met with the owners or managers of the establishments and we have a very good rapport. A few of the establishments have a tobacco display that is accessible to customers. So they will be working on putting up a barrier or moving the product. One violation out of seventeen (17) checks is 6% and the State average is approximately 10%, so that is very good. The Food and Drug Administration (FDA) will also be conducting checks. I will monitor those checks and keep the Board apprised of the results of those checks.

Mrs. O'Rourke asked if the Board Members had any questions.

Mrs. Giroux asked has Fill N' Chill paid the fine.

Mr. Beauregard replied that he does not know. The compliance check was done on December 16, 2011 and they have 21 days to pay the fine to the Board of Health.

Mr. Berube replied they have not paid the fine yet.

Mr. Beauregard explained that if they don't pay the fine within 30days, I will send a follow-up letter as a reminder. I have not received a notice of appeal so that is a good sign. I will follow up with the Board of Health regarding this matter.

Eastern Terminals/Iron Horse Park Update

Mrs. O'Rourke stated the next item is Eastern Terminals Iron Horse Park Update.

Mr. Berube explained that included in the Board's package is a copy of the latest letter to Eastern Terminals from the Department of Environmental Protection (DEP). DEP conducted some additional soil testing and are concerned with dioxin that was discovered in the soil. DEP required Eastern Terminals to revise their Risk Characterization to include dioxin as a contaminant of concern. Eastern Terminals has until January 30, 2012 to submit their response to DEP. At the next meeting I will update the Board regarding the information that Eastern Terminals has submitted to DEP.

Mrs. Giroux asked have there been any complaints about the odor or anything in that area.

Mr. Berube replied no, there have not been any complaints.

Mrs. O'Rourke asked if the Board Members had any questions. The Board Members did not have any questions.

Proposed FY2013 Budget

Mrs. O'Rourke stated the next item is the proposed FY2013 Budget.

Mr. Berube explained that the budget is level funded. The only increases are from contractual obligations. Mr. Berube asked if the Board had any questions.

Mrs. O'Rourke stated that she had a question regarding car allowance. Why does the Public Health Nurse, Christine West get a car allowance?

Mr. Berube explained that it is stated in the contract.

Mrs. O'Rourke asked the Board Members if they had any questions. The Board Members did not have any questions.

2011 Beaver Management Report

Mrs. O'Rourke stated the last item under Board of Health Business is the 2011 Beaver Management Report.

Mr. Berube explained that we manage quite a number of sites. We did quite a bit of trapping this year. We were able to work with PanAm Railways to provide some money to do some work in the Pond Street/Middlesex Canal area which is one of our biggest problem sites.

Mrs. O'Rourke stated that there are quite a few of the sites are under control.

Mr. Berube explained there are a few new sites. One of the most recent sites is on Marshbrook Road.

Mrs. O'Rourke asked who paid to replace the fence at the Cook Street culvert.

Mr. Berube replied it comes out of the budget under the Conservation Commission.

Mrs. O'Rourke asked who paid to replace the pipes.

Mr. Berube replied that all comes out of the budget. The devices become quite old and corroded and needs to be replaced. The Conservation Commission has the account to pay for beaver management.

Mrs. O'Rourke asked if the Board Members had any questions about the Beaver Management Report. The Board Members did not have any questions.

7:15 p.m. George Allen – 42 Sachem Street – Request a Variance for work within 25 feet of the Flood Plain

Mrs. O'Rourke stated the next item is George Allen requesting a Variance for work within 25 feet of the Flood Plain at 42 Sachem Street.

Mr. Dresser presented to the Board a large copy of the Certified Plot Plan for 42 Sachem Street showing the location of the proposed project.

Stephen Dresser, Dresser, Williams & Way representing George Allen identified himself. Mr. Dresser explained that the applicant has applied for a variance for construction activity within 50 feet of the flood plain.

Mrs. O'Rourke commented that the plan states within 25 feet of the flood plain.

Mr. Dresser explained that we are within 25 feet also. It will actually be eighteen (18) feet from the FEMA Flood Plain. In this particular case the Green Engineering Flood Plain is below the FEMA criteria. There is a steep slope. The proposal is to remove the garage and pavement and put up some hay bales. Once the hay bales are up the house will be torn down and a new house will be constructed in the same location of the existing house. The new house will be within 50 to 100 feet of the flood plain. The project will reduce the impervious area by 30% within the 100 foot buffer zone.

Mrs. Giroux stated that according to the application it will reduce the impervious area by 34%.

Mr. Dresser replied it is 34%.

Mrs. O'Rourke asked Mr. Berube for his comments.

Mr. Berube stated that it would be an improvement to the neighborhood. The proposed house would be moved further away from the flood plain. The existing garage and pavement will be removed.

I think the project is beneficial. I recommend that the Board grant the variance.

Mrs. O'Rourke asked the Board Members if they had any questions. The Board Members did not have any questions. Mrs. O'Rourke asked if any abutters would like to speak.

Maryann Pulliam, 39 Sachem Street, identified herself. Ms. Pulliam asked how big will the house be on the property?

Mr. Dresser explained that it will be smaller than the original footprint but it will be taller. There is a 28 foot height limitation on the size of the structure. It would be like a two story house with a shorter pitch roof.

Mr. Kane made a motion to grant the variance of the Board of Health Rules and Regulations, Chapter 5, Section 5.5.005 (1) (2) in order to construct a single family dwelling and work within twenty-five (25) feet of Flood Plain at 42 Sachem Street 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).
- 2) The applicant proposes to raze an existing dwelling and detached garage and construct a new single family dwelling which will be an improvement to the neighborhood. The new dwelling will be serviced by town water and sewer.
- 3) The location of the proposed dwelling will be further away from the Green Engineering Flood Plain and the FEMA Flood Plain than the existing dwelling. There will be no filling within the flood plain.
- 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 number 1, 2, 3, 4, 5, 6, 9, 10, 11, 12, 13, 14, 15 and 25 in accordance with the Board of Health regulations and Special Conditions:

- A) All construction must be in accordance with plans submitted for review and approval, prepared by Dresser, Williams & Way, Inc. dated November 29, 2011 and stamped by Stephen R. Dresser, RPE#49202.

- B) These conditions must be properly recorded at the Registry of Deeds and a certified copy of these conditions must be returned to the Board of Health office indicating that a marginal reference was made on the original deed, prior to the Health Department approval of any building permit, occupancy permit, certificate of compliance, etc.

Mrs. Giroux seconded. So voted unanimously.

7:20 p.m. Empire Recycling – 36 Sterling Road – Appeal Hearing for Notice of Violation and Order for Correction

Mrs. O'Rourke stated the next item on the agenda is Empire Recycling Appeal Hearing for Notice of Violation and Order for Correction. Mrs. O'Rourke asked the audience to please raise their hand when they want to speak and clearly state their name and address.

Attorney Dangora presented to the Board Members the proposed plans for the 3 sided structure for review. Attorney Dangora provided the Board Members a copy of a review of Noise Control Engineering report by Cavanaugh Tocci Association. Mr. Dresser presented the original landscaping plans of Swanson Meadows. Mr. Ken Pynn presented the Board Members the original plans of the townhouses and a letter from Milton Kinney, the Inspector of Buildings.

Attorney James Dangora, Sr. from Shea, Dangora and Nelson representing Empire Recycling identified himself. In June 2011 Empire began the process of constructing a 3 sided shed, 40 feet by 100 feet. The idea is to collect the recyclables and put them inside so that nothing would blow around the site until the material is moved inside the building. At the Board of Appeal hearing July 13th the Special Permit was approved. We began a 3 month hearing process with the Planning Board on September 19, 2011. On September 16, 2011 Richard Berube sent a letter to the Planning Board supporting the project. He stated that it is a great idea and would be a great addition to the building. He also noted that Empire has been very helpful and cooperative. The Planning Board hearing was continued to October 24, 2011. On October 24, 2011 just before the hearing began the Town Manager, John Curran sent a letter about 7:00 p.m. to the Planning Board that contained a lot of inaccurate facts regarding hours of operation. As a result of his letter the matter was continued to December 12, 2011. On December 12, 2011 the Planning Board approved the project. In the meantime the Conservation Commission also approved the application for the construction of the addition. After John Curran was told his facts were wrong, we received a notice from the Board of Health inviting Empire Recycling to a hearing on November 7, 2011. On November 7, 2011 we discussed the project in the past and in the present. Mr. Berube stated that a noise study was needed. The Board discussed how the study was going to be paid for. Mr. Berube explained that he would contact some sound companies and would begin the process of exploring a noise control study. Mrs. Giroux suggested that they should wait until the addition was constructed. Mr. Berube replied no, that the study had to be done now. Attorney Dangora stated that maybe the Board did know or maybe they did not know that the sound study was going to be done on November 7, 2011. It had gone out to bid in October and John Curran signed the contract on November 2, 2011. The November meeting was an absolute sham. You discussed with us about conducting a noise study and the Board talked about how they would be able to pay for it. It had already been setup. The contract had been bid and the contract was signed. On November 7, 2011 we also discussed the Board's approval of

the condo project. Condition #18 states that the Board required as a condition of approval a one hundred fifty (150) foot buffer zone. That has never been enforced. On November 7, 2011 several of the Board Members said I think we dropped the ball or fell asleep at the wheel. That may be the case. The condo documents are subject to the Board's decision. Since it is subject to the Board's decision I suggest that the condo association assume all the responsibility and put up the sound barrier. Attorney Dangora asked Mr. Berube if a Certificate of Compliance had been issued on the Board's decision.

Mr. Berube replied no.

Attorney Dangora stated the Board of Health decisions have never been enforced and no Certificate of Compliance was issued. Should we shut the condos down?

Mr. Berube replied I do not think that statement is 100% accurate.

Attorney Dangora explained that he read all the bids. I requested the bids from Town Counsel, Pat Costello. The bids are very interesting. The bids indicate that to do a sound study it is a two person job. There should be somebody looking at the monitor and somebody should be there to find out if the noise is coming from Empire. In one of the bids it says that night time trucking activities at the nearby terminal might be contributing to the noise heard by the residential neighbors. They are talking about the trucking terminal next door. You hired someone that does an unattended test. The monitor is placed in an area and there is no one at the site. The monitor registers a noise but there is nobody there to see if Empire is open at that particular time. They go back and listen to the monitor and when they hear a noise they say it is Empire. It has to be Empire. On page 3 of the Noise Control report the chart talks about the 30 highest noises. Those noises are from automotive engines. I don't believe this Board has any jurisdiction over noise from automotive engines. If you look at Title 42 of the U.S. Code it is the jurisdiction of the Department of Transportation. Among the top 30 biggest noises are airplanes flying overhead and a couple of the noises are unidentified. We have looked at the by-law. The by-law does not talk about zones it talks about uses. The by-law is ambiguous. If you are measuring the noise from one site or another, the by-law does not state which standard applies. Does the industrial standard or the neighborhood standard apply? The by-law does not say that. We hired our own expert to review your report. It is a flawed report. It is an unattended report. If you look at figure 3 on the back of the report noise is registered on Saturdays and Sundays. Empire does not work on Saturdays and Sundays. There is not as much noise on those days as any other time. Empire has thirty-eight (38) employees and they want to keep on working. They want to build the shed because it is going to help. It will have sound proofing on both ends. The Board has to enforce their decision from 2001 and make the condo association put in the buffer zone. That is our case.

Mr. Berube explained that when the noise study was conducted, I was doing my job whether or not the time was inaccurate, I think is irrelevant. My intent was to go forward with the noise study. I knew that we did not have enough money in the Board of Health budget so I got permission from the Town Manager. The timing of the noise study was critical because if everyone was aware that the study was being done they could alter their routine activities and that would cause the noise study to not be accurate. You mentioned about Swanson Meadows and the buffer zone. Mr. Berube provided the Board

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Members with a copy of the plan that shows the buffer zone. The buffer zone does not extend down to Rangeway Road as mentioned at the last meeting. This was a concern of the Board. This came before the Board in March of 2002. At that time the developer, Rocco Scippa proposed an earthen berm. Rocco was going to work with Empire Recycling to see if he could obtain an easement in order to construct that earthen berm. Dresser, Williams & Way was involved and was going to help with the design. In October of 2002, Rocco was unable to obtain that easement so Rocco proposed to construct a fence which proved to be inadequate. Mr. Berube showed the Board Members pictures of the fence. At that October meeting, it was the first public meeting when we heard complaints about Empire Recycling. The complaints were not focused on truck noise, it was also banging and grinding noises. That was the first time that the noise from Empire Recycling was brought to our attention. In the past couple of years the noise has come to a head. We encouraged Empire Recycling to work with Swanson Meadows to see if they could come up with a solution to mitigate the noise. Empire Recycling has made some efforts, however it is not enough to satisfy the residents of Swanson Meadows. We still have a problem. It was my determination that the only way we were going to resolve this was to have a noise study performed. Noise Control Engineering is present to explain the report and answer any questions that the Board may have. Whatever issues there are with Swanson Meadows of what was done, what wasn't done and what should have been done is irrelevant. A noise study was done and it clearly shows that there is a noise violation and it creates a nuisance. The residents at Swanson Meadows cannot enjoy the use of their property.

Attorney Dangora stated that Richard's letter to the Planning Board on September 16, 2011 talked about how cooperative and good Empire Recycling has been and how good they are to work with and what a good idea it is to build the shed and how the shed would be helpful to mitigate noise and be helpful for the recycling business. We are still fighting that.

Mr. Berube replied that he still stands by that statement.

Attorney Dangora replied that you never said that. You did not say that you wanted to do the sound study. You misled us on that. Your conduct is very very upsetting.

Mr. Berube stated that he disagrees with Attorney Dangora. I was doing my job. I looked at the project and I thought it would benefit toward the long term goal of mitigating the noise, but I did not think it would solve everything. It is a step in the right direction.

Attorney Dangora commented that you were doing your job. The people from Swanson Meadows knew you were doing the test. We did not know. The Board Members did not know you were doing the test.

Mr. Berube replied that he did what he had to do to get the job done.

Mrs. O'Rourke asked who knew about the noise study. I didn't know and I don't think the rest of the Board Members knew about the study. How many people knew about the study?

Attorney Dangora stated that no one from the condo association knew about the noise study.

Mr. Berube replied no one knew about the noise study. I was the only one that knew when the noise study started.

Mrs. O'Rourke asked if someone from Noise Control Engineering would like to explain the noise study.

Michael Bahtairian, Vice President of Noise Control Engineering, identified himself. Mr. Bahtairian introduced Allan Beaudry, who performed the study. Mr. Bahtairian explained that he would give a brief introduction. Noise Control Engineering has been in Billerica for twenty (20) years. The president of the firm lives in Billerica. He helped draft the noise ordinance for the Town of Billerica. We are a qualified firm. We are members of the National Counsel Acoustical Consultants. I am board certified by the Institute of Noise Control Engineering. I helped write the proposal and direct the study. We are both degreed engineers. We provided a quote for the noise compliance. This is a one man job on the site by using unattended methodology that Mr. Beaudry will explain. We could do it at better value by using one person than by using two people standing in the middle of the woods listening for trucks all night for multiple nights. This methodology uses one person and Mr. Beaudry is here tonight to explain the study. I reviewed the General By-Laws of the Town of Billerica, Article 23.4 states *it shall be unlawful for any person at any location within the area of the town to create any loud noise on property owned, leased, occupied or otherwise controlled by such person which causes the sound level when measured on complainant's property to exceed the greater of.* There are two noise zones related to industrial and residential. It is clear that the location of the Noise Level Zone I for night time of 50 dB(A) is the right criteria to compare to. I disagree that the noise ordinance in the Town of Billerica is ambiguous. If you relate to MassDEP there is a lot of ambiguity. Allan Beaudry will explain the report.

Mr. Beaudry explained that we placed an unattended monitor on the resident's property in the direction of Empire Recycling. A Sound Level Meter was strapped to a tree which takes measurements at 5 minute intervals. In addition I also performed an attended measurement. At that time I took measurements of the background levels which verified the levels that we found using the unattended measurements. While I was there I heard backup alarms and truck moving noises from New Penn. Mr. Beaudry explained Table 2 in the report. I took a measurement that I heard from New Penn and that was 44 dB(A). The events from Table 3 were significantly higher than 44. The unattended noise level was measured using a Larson Davis 831 Sound Level Meter. This instrument was calibrated before and after the study. The attended measure was taken with a Bruel & Kjaer Type 2270 Integrating Sound Level Meter. This instrument was calibrated before and after the study. The Town of Billerica Noise Regulations for residential areas is limited to 50 dB(A) between the hours of 10:00 p.m. to 7:00 a.m. All the measurements were taken between the hours of 10:00 p.m. to 7:00 a.m. and then rated from highest to lowest. I am confident that all of the noise is from Empire Recycling. I took three measurements from New Penn and they were quieter. Mr. Beaudry explained the measured octave-band sound pressure levels for each event in Appendix A. Mr. Beaudry explained that the octave tone levels at Empire were over the Mass. DEP octave tone limit.

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Attorney Dangora stated that New Penn operates twenty four hours. When the unattended measurements were taken you concluded that it was Empire making the noise because the one time you measured New Penn who knows what was going on at New Penn on that particular evening. Have you read the by-law accurately? The by-law does not state the standard. The by-law talks about uses. If you measured the noise on the condos property what standard did you apply? Empire is in an industrial area. We passed the standard for an industrial area. They want to apply the residential standard. The by-law does not say which applies. It is a matter of interpretation. It was an unattended test. They were the lowest bidder by a significant amount. The bids ranged from \$5,000 to \$12, 000. The other bids talked about using two men. They talked about having people there to see where the noise is coming from. Thank-you.

Mrs. O'Rourke asked the Board Members if they had any questions.

Mr. Kane asked Attorney Dangora if he had a copy of the Sound Report that he had done.

Attorney Dangora replied yes.

Mr. Kane asked if he could share that report with the Board that would be helpful. Mr. Kane asked Attorney Dangora have you submitted this report to the Board before now.

Attorney Dangora replied no, I have not.

Mr. Kane asked Mr. Beaudry about the 12 second average duration trigger for the unattended monitor, would that pick up shorter duration events like a short loud bang if it is less than the 12 second duration. Would that trigger a recording?

Mr. Beaudry replied that it needs to be a minimum of 10 seconds above a certain trigger level. It is a 10 minute average.

Mr. Kane stated so 70 dB(A) for half a second would not trigger a recording because it would not be adequate. The unattended report potentially could have missed some of the reported sounds from the residents. If the residents reported loud short duration banging type sounds. So this report may not reflect that because of the study design.

Mr. Beaudry replied that is correct.

Mrs. Giroux asked could you please explain why it was better to do the study unattended versus two people.

Mr. Bahtairian replied the cost. It was not an expense the town wanted to pay. I never thought of using two people. I think the combination of the technology, the instrument that we used and the recording to keep all the data for the long term was adequate. We monitored unattended for seven days. If you look at the table Allan prepared we picked up things from multiple nights. We did some attended

and we did our best to pick the right night. Apparently there wasn't a lot of operation from Empire that night. We learned that on the attended night there is another operation and the noise level from that operation was about 44 or 48 dB(A). It did not generate levels 10 dB(A) above that. It is nearly impossible for New Penn unless they are doing something extreme to produce a sound of 10 to 15 dB(A) higher. That is what we learned from the unattended. The reason the other firms were 10 times higher in cost was because we are from Billerica and they come from further away.

Mrs. Giroux asked is it possible to have the combined noise from New Penn and Empire Recycling create these spikes so that one person isn't entirely making the noise. That is not noted in the report.

Mr. Bahtairian replied yes if you are lucky. These measurements are 10 second averages. So New Penn and Empire are in sync and they are both making the noise at exactly the same time. We are talking about very quick events that we are recording over and over. Second we are measuring a level of 57 dB(A) and New Penn was noted at 45 dB(A). A difference of more than 10 dB(A). If the source at Empire is 55 dB(A) and a source at New Penn that was 45 dB(A) the addition of those two levels would be 55.001 dB(A). So Empire creating noise levels of 55 dB(A) would drown out any noise level created by New Penn. So the answer is no. The two sources would be separated. You can only identify the noise level from New Penn when Empire is shut down.

Mrs. Giroux stated that does not make sense because New Penn is a twenty four hour operation.

Mr. Bahtairian replied at the same spot New Penn produced a level of 44 dB(A).

Mrs. Giroux asked you only took one reading.

Mr. Beaudry replied a number of readings over a two hour period on that one night.

Mrs. Giroux stated so on that one night New Penn was quiet and therefore you are attributing all the noise to Empire Recycling.

Mr. Bahtairian replied the other way around.

Mr. Beaudry replied no, Mrs. Giroux is correct, I think you misunderstood. I took measurements only hearing noise from New Penn. The noise levels that were measured at the same location on different nights were so much greater that it could not have been New Penn.

Mrs. Giroux asked is it possible that New Penn knew about the study.

Mr. Bahtairian replied we made it very clear to Richard Berube that the best way to conduct the study was that nobody would know.

Mrs. Giroux stated somebody had to know because you needed permission to go on the property.

Mr. Bahtairian replied we asked for general permission. I don't know what was communicated to the residents. We were not on Empire Recycling property. The only person that knew what was happening was a person from Empire Recycling that saw Allan on Thursday night and recognized that the study was being conducted.

Mrs. O'Rourke asked Mr. Berube for his comments.

Mr. Berube explained that the purpose of the noise study was to determine compliance with the Town of Billerica By-Law and the State Regulations. There wasn't anything done to try to make up the results so that we would have violations with Empire Recycling.

Attorney Dangora shouted something about New Penn and the noise study done in 2001.

Mr. Berube stated can I finish my statement. There wasn't anything done to make up any kind of data to point the finger at Empire Recycling. This study was done objectively. The reason why there was no notification was so that the testing would not be counterfeited. If Empire knew this study was being conducted they would have changed their way of conducting their activity. No one knew except myself and Noise Control Engineering. I did approach the Swanson Meadows Condo Association to ask them for permission to go on their property for the purpose of conducting a noise study but I did not tell them when the study was going to occur. They had no idea when it was going to happen. I did notify the Police Department in case someone from Swanson Meadows reported that they saw someone on their property.

Mr. Bahtairian replied the reason for doing the unattended measurement is that once the equipment is installed the equipment would be hidden in the woods and there would be no one coming or going. The only way to conduct a valid study is to conduct a blind study. Rich and I discussed a blind study. I did not see the purpose of contacting anyone and identifying that there was going to be a noise study.

Attorney Dangora stated that the study was unattended. There was a noise study done in 2001 and the noise level from New Penn was 80 dB(A) and off the charts. All of a sudden there is no noise. They do one study attended and it was determined that the noise is not coming from New Penn. What happened the other six nights? New Penn was there. Where they placed the monitor it was impossible to pick up the noise from New Penn as opposed to Empire Recycling.

Mr. Berube commented if that is the case it is clear that all the noise is made by Empire Recycling and the noise could not be coming from New Penn.

Attorney Dangora replied you are wrong.

Mr. Berube replied you are contradicting yourself.

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Attorney Dangora replied read the report that I gave you. The noise could have been from trucks going by.

Mr. Berube stated the report is several pages and I am just getting the report now. It is tough to digest now.

Attorney Dangora replied that the noise could have been from trucks going by. The noise could have been from anything going by.

Mr. Bahtairian explained that the audio recordings are not from trucks driving on the road.

Mr. Beaudry replied that the recordings are of the first 10 seconds. Of the 30 events there were four (4) events of airplanes going by. Mr. Beaudry stated that he has the recordings on a CD that he could give to the Board. The majority of the noise is screeching brakes, idling trucks and some banging noise. It does not sound like a truck driving by.

Mrs. O'Rourke asked if anyone from the Condo association would like to address the Board.

No one in the audience wanted to address the Board.

Mrs. O'Rourke asked if anyone from the Condo association had any questions.

Martial Frechette, Member of the Condo Association, 216 Rangeway Road, identified himself. Mr. Frechette stated that Empire Recycling would try to tell you that they were here first. In 1997 at the October Town Meeting the Town of Billerica zoned Swanson Meadows as rural residential. In October 2000 it was rezoned as a townhouse overlay. In November 2000 the business located at 36 Sterling Road was purchased and became Empire Recycling. The building was there first not Empire Recycling. They will try to tell you that if they cannot operate twenty four hours a day they are going to close down and lay off 38 employees. It is management's responsibility to schedule the workload to support the current work force and abide by the law. They will try to tell you that New Penn is making the noise. During the sound study not one incident was attributed to New Penn. They will try to tell you that Empire has done everything that has been asked of them. They have been asked several times to obey the Town Noise By-Law and have not been able to do so. The only things that they have done were forced to do legally. They will try to tell you they want to keep the dialogue open with the residents. At the last public hearing Empire's counsel pulled Empire's owner away from the Chair of the Condo Association in the middle of a conversation. What has really happened? Empire is operating twenty four seven totally disregarding the town noise by-law. Empire is causing serious physiological issues to the children of Swanson Meadows. Empire is causing serious medical issues to the residents of Billerica and they continue to break the law without being held accountable. Ladies and Gentlemen of the Board we thank you for conducting the sound study. The results backup what we have been saying all along. Empire is in daily violation of breaking the law. We have logged approximately 30 complaints with the

Board of Health this holiday season. The Board of Health is replying and we are communicating and thank you for that. We request that you restrict their hours of operation from 10:00 p.m. to 7:00 a.m. per

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the town's by-law. If you cannot restrict their hours please deny this appeal and send this issue back to the Zoning Board of Appeal for a permit review. We also request that you count the first data point of the study as the first infraction and institute fines for the other twenty-three (23) infractions. We also request because of the health issues that we have the town should do another study and fine them for each infraction. We have our own agenda for pursuing this issue and we are going to exhaust every avenue until the right thing is done. We hope you will get on the right side of this problem and give it the attention it deserves. No one should have to endure what the residents are enduring. Please look within yourself and ask yourself what is the right thing to do. Thank you.

Attorney Dangora stated we were there. When the condos began we were there. The fact that the town rezoned the property, who cares. It had been a recycling business for twenty (20) years. Joe Motzkin bought the business in 1999-2000. We were there when they moved in. Don't let Empire tell you that they were there before the condos.

Mrs. O'Rourke asked wasn't it another company.

Attorney Dangora replied it was a recycling company. When they built the condos we were there.

Mr. Berube stated it doesn't matter, it is called coming to the nuisance.

Stephen Dresser, Dresser, Williams & Way, identified himself. Mr. Dresser stated that the noise by-law is not ambiguous. The by-law is clear and defines residential use and industrial use. Zone I is a residential use and Zone II is an industrial use. Clearly Empire is an industrial use. The standard is the use. 65 dB(A) is not loud. The normal talking voice is 60-70 dB(A). In all the public hearings that we had nobody ever said that they start their trucks and it drives me crazy. Everything is about a slam noise. This sound study has not verified what the residents are trying to say. It does not pick up those sound noises and where they are coming from. It shows trucks starting which is not what the complaints are. Once they found out about the noise study they put a box in the mail room for Empire Recycling complaints. The town took the inexpensive approach to the sound study and it hasn't shown a thing. The residents of Swanson Meadows have signed waivers that they knew there were noises and odors there. The reason you took this action is because of the slamming noise. You are spending tax dollars. I am a tax payer in this town as well. I have spoken to a lot of people in this town and they want to know why you are doing this. They signed a waiver and acknowledged that they were moving next door to an industrial complex. Now they don't like that they are living next to an industrial complex. I don't understand that. Now you want the town to do another sound study and spend more tax dollars. To me it is clear that Empire is an industrial use and they are entitled to the use of 65 dB(A). On what side of the sound fence did you take the study?

Mr. Bahtairian replied in front of the sound fence.

Mr. Dresser showed a copy of the landscaping plan presented to the Zoning Board of Appeal that shows 40 white pine trees that were supposed to be planted at the rear of the buildings. The condo

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association wants Empire Recycling to be held to the noise by-laws. The condo was supposed to plant 40 white pine trees. The sound study was flawed. The location of the monitor should have been placed somewhere else. We need to move on. We need to let Empire build the structure and see what happens. We need to find a way to work together. Empire has done things that they were not required to do.

Ken Pynn, Member of the Board of Trustees, identified himself. Mr. Pynn stated that he would like to address Attorney Dangora's comment about lets shut down the townhouses. The townhouses were built under a special permit issued by the Board of Appeal. In order to make sure that these townhouses were constructed correctly per the permit they had Howe Engineering report to the Board of Health, Zoning Board of Appeal and the Department of Public Works every two weeks. If there was any problem with the construction of those townhouses the construction was to stop immediately. The locations of the foundations were laid out per plan 207 Page 49 registered at the Registry of Deeds. It was drawn up by Raymond Engineering Services. This plan does not call for a 150 foot buffer zone behind the townhouses. Mr. Pynn pointed to the location of the 150 foot buffer zone and where it ends.

Mrs. O'Rourke stated wasn't there a change or a shift in the location of the buildings because of the location of the golf course.

Mr. Pynn explained that he also had a letter to Mike Kinney, Inspector of Buildings at that time. Mr. Pynn read the letter. *Dear Mr. Kinney, At the request of Mr. Rocco Scippa I have reviewed the decisions issued by the Zoning Board of Appeal (ZBA) and in conjunction with these decisions and conditions which were issued by the ZBA I find that the developer is in substantial compliance with the special permit. Any deviations from the plans dated March 17, 2001, Condition A which occurred during the development process which have not been approved by the ZBA are not significant and are the results of compliance with other conditions of the permit. Very Truly Yours, Stephen R. Dresser* I feel that the townhouses are built right, built in the proper location and all the regulatory processes were followed. The only way Attorney Dangora can take the condos is by eminent domain. Good Luck.

Attorney Dangora explained that the plan Mr. Pynn showed with the 150 foot buffer zone does not coincide with the Board of Health's decision. The Board of Health's decision states that the 150 foot buffer is to be located behind the industrial complex on Sterling Road. They stopped it before it got to our property. I don't know why. Mr. Pynn stated we are there legally. There is no Certificate of Compliance. Joe Motzkin is there legally too. We have a special permit from the Board of Appeal granting us a permit to be there. We are all there legally. Everybody is right, nobody is wrong. There has to be some give and take. They tried to hold up our project. Richard thought that it was a good idea to build the structure from the beginning. All we wanted to do was build the structure to get everything off the ground and have the ends sound proofed. Sandy suggested that the sound study be done after the structure was built. Would that have been a better test? If they are there legally a Certificate of Compliance should have been issued.

Ralph Deldon, 216 Rangeway Road, Unit 113, identified himself. Mr. Deldon explained that when we moved in 2003 Empire Recycling was trying to expand their business. I was at the meeting when *Attorney Dangora said what person in their right mind would buy a condo behind a recycling*

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plant. It infers that we are not of our right mind. We did our due diligence. There was a document that states please find enclosed a copy of the report from our consultant regarding the sound study from Swanson Meadows. Further it states that the issue of exhaust fumes from the industrial area was also discussed at the meeting. The unit's closet to the industrial area will be about the same elevation as the truck area. The wetlands in between are about 15 feet lower. In addition except for the first three groupings of buildings there will be at least 100 feet of a vegetation buffer to trap the fumes. So it states that for the first three buildings there was no buffer. Everything in the sound study points to New Penn it does not even mention Empire. It also states that a recycling facility is located to the north of New Penn Terminal. While the recycling center is continuously operating throughout the day and night, most of the activity occurs during the daytime. Other than recycling trucks leaving the building at 3:00 a.m. there is very little activity at night. When we looked at this we assumed that their business would not expand or that the town would look out for our best interest. We are asking the Board of Health to look at our interest. We are law abiding, simple, hardworking people. Back in July of 2010 we put in our mailroom a box for complaints. From August 2010 to October 2010 there were over one hundred (100) complaints. Mr. Berube asked me to compile them because the town did not have the manpower to look into every single incident. First I started to fax the complaints and I think I burned out the fax machine. So then I compiled all the incidents on paper along with some pictures. We talked to Mr. Motzkin and his son and explained that all we were looking for is to have some peace and quiet between the hours of 10:00 p.m. until 7:00 a.m. It was suggested that we are just complainers. Empire is a conditional exempt operation. ***310CMR16.05 states that the following recycling operations or activities do not require a site assignment provided the operation incorporates good management practice, is carried out in a manner that prevents an unpermitted discharge of pollutants to the air, water or other natural resources of the Commonwealth and results in no public nuisance.*** They are exempt from an air study. Some of the residents have been going to the doctors for respiratory infections. For ten years (10) Empire has been dumping their material in front of their building. We are responsible for getting this addition put up. It may in fact help us. It also states that ***The operation must receive, handle and store recycling materials, incidentals, solid wastes and residues only within an enclosed handling area or adequately covered containers or trucks.*** They were cited in 2006. I have it from the Board of Health. In 2006 Mr. Motzkin and his son said they were thinking of putting a tarp over the mound of material. That was also in 2009. They have been cited. If it wasn't for us going to the DEP this may not even happen. They would just dump there all the time. How come it has taken ten (10) years to get to this point? That is why we are upset. These materials must be presorted. I am not sure that the materials are presorted. On Mr. Motzkin's website it states that one of the services is that they sort these materials. We think they are extending beyond what that recycling facility was initially given the exemption for. According to their website their one of the top recycling facilities, their fast moving, their goal is to expand and make money. We understand that. They have the right to be there. We have said that at every meeting. They are nice people, but when their business practices infringe upon the health of people maybe they are not working in good faith like they say they are and all their debris, odor, contaminants and dust are flying in our condominiums. We are appalled and we have been very patient. Mr. Dresser I am very upset with you for saying that we are just a bunch of complainers.

Mr. Dresser replied that I never said that. I only said that you signed an agreement saying that you knew that there was an industrial complex there.

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Mr. Deldon and Mr. Dresser were shouting at each other.

Mrs. O'Rourke banged the gavel and stated that is enough.

Mr. Deldon stated that agreement was by the Town and was done by Howe Surveying Civil Engineers. It only mentions New Penn not Empire. The document states that a recycling facility is located to the north of New Penn Terminal, while the recycling center operates continuously throughout the day and night most of the activity occurs during the day time. The only noise is from the trucks going in and out around 3:00 a.m. I am very frustrated. Mr. Deldon apologized for yelling.

Mr. Berube suggested that Noise Control Engineering speak again.

Mrs. O'Rourke stated that a gentleman in the audience had his hand up for quite some time.

Dick Tracey, 14 Westgate Road, Billerica identified himself. Mr. Tracey explained that he has lived in that area for forty-two (42) years. As a Town Meeting Member back then, when this building was approved for a recycling facility it was the third group to be located there. It was chosen to be located on the corner of Sterling and Rangeway Road because it was in the middle of nowhere. Recycling facilities are known to make noise and to be dirty. This is an industrial area. The only residential area was diagonally across the street. It was Ben and Jessie Merritt's house. Ben and Jessie had no problem nor did not complain about this. That whole area was all woods. That area was always known as old man Swanson's property. That is the reason it was approved. The location was picked. Empire may have been the third owner but it is something that the town wanted it and it benefits the town. It is an unfortunate situation that Swanson Meadows was built where it is. It is an unfortunate situation that the trees were never planted. Mr. Tracey pointed to where the noise study was placed and stated it is unfortunate that the monitor was aimed in that direction. Mr. Tracey pointed and explained where the monitor should have been placed so that the noise from New Penn would have been picked up. It is hard to say whether this study was qualified. Mr. Motzkin to the best of my knowledge has stopped most of the stomping and truck noise and he is working to just move the trucks at night. It is a tough situation to be in. I wish you the best of luck.

Attorney Dangora stated that the sound study done in 2001 there was no mention of Empire Recycling. It talks about the recycling company leaving the site at 3:00 a.m. We were there and we were operating. The noises that showed up in the noise study are basically engines running. Basically that is what the noise is. We were there before they built those condos, don't be fooled by that.

Mrs. O'Rourke asked Mr. Berube for his comments.

Mr. Berube stated that we should allow Noise Control Engineering to discuss their report because of some comments regarding their report and whether or not the noise zone is applicable that they used in their report.

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Mr. Bahtairian explained that 65 dB(A) is quite loud outside in the middle of the night when someone is trying to sleep. I don't think there is any further discussion. If you would like we can do that test. Second, we have heard about the white pine trees and noise barriers. When we first visited the site, we saw the fence. Most of the residents are sleeping on the second floor and that fence does not block the sound to the second floor of anybody's apartment. You would need about 100 feet of fully leaved deciduous trees to get about 1 dB(A) of sound reduction. I am a sound engineer and I can tell you that 100 feet of trees will only provide a visual barrier. These discussions do not factor into what we are doing today. We put a monitor on the other side of the fence because it is their property and the fence has no bearing of sound to the second floor. Our approach was to determine whether Empire was causing a sound noise compliance. We recognized that New Penn is in that area. We also heard that there is some ambiguity in the noise by-law. There is ambiguity in everything. We see it every day. I have read a lot of noise standards. I will let Town Counsel and the attorney's address that if you think they need to. In my mind there is no ambiguity with the way Section 23.4 is stated. It is very common to have a matrix of noise limits that relate on one end to the noise producer and to the noise receiver. It makes no sense to say that the noise limit is applicable for the noise producer to where ever their sound travels. There is no doubt in my mind that the noise limit of 50 dB(A) is the applicable limit and the attorneys can argue this. The Mass DEP guideline states that the limit should not be 10 dB(A) above background. We measured background at 40 dB(A). So 40 dB(A) plus 10 dB (A) is 50 dB(A). Mr. Dresser stated that the DEP (limit) starts at the house. It is not at the house. It starts at the property line or at the nearest inhabitant resident. We were more or less at the property line. Our name was not on the previous studies. We have nothing at stake. I stand up for our firm's reputation. We are highly regarded and qualified. We do know what we are doing. We are providing value using the best technology we have. We are not part of the history. There were comments about truck operations. Everything we noted was about truck operations. Unless the truck is driving on the road then the sound of the truck is not exempted. Mr. Bahtairian gave an example of a study they did in Webster, MA. We were asked by Mr. Berube if we could help Empire with an assessment of their operations. I replied that we could but we need to see the day to day operation of how they run and what they do. We have been involved with several companies in the area and have made a lot of recommendations. However, we are not Empire's consultant. They have hired a consultant to review our report. Is there anything in the Empire Recycling report that talks about how to make the facility quieter or what kind of walls to build in the new building or what they can do at night to help the operations? I appreciate the chance to speak again on behalf of my company.

Pallavi Dedhia 216 Rangeway Road, Unit #193, Member of the Board of Trustees, identified herself. Ms. Dedhia explained that after attending all the meetings for the last 3 ½ years that I have lived at Swanson Meadows. I am not surprised that Attorney Dangora would claim that if the study was done with two men he would have claimed that they were biased. Attorney Dangora has accused the Board of lying and he is denying that.

Attorney Dangora replied you have to stop that. I have not accused anybody of lying. You have to stop that.

Ms. Dedhia replied that you are accusing Mr. Berube of making up the study and being biased.

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Attorney Dangora stated that he accused Mr. Berube for not telling the Board about the study.

Ms. Dedhia stated that Attorney Dangora is interrupting me. Attorney Dangora is claiming that the residents at Swanson Meadows were aware that the sound study was being done. I would like to see proof of that. He also claimed that Empire Recycling does not work on Saturdays and Sundays. I would like to see the payroll for the last 12 months, 3 months or 1 month and I would like it put in writing that they absolutely do not work on Saturdays and Sundays. That is a lie. They do operate every Saturday. Ever since I have been living there they have been violating the noise at night. We have been patient and cooperating with them and they have not done anything in good faith. If you drive by today you can see all the debris and see all the violations. I want to see the proof in writing that he is accusing us of. Just because the Board hired somebody with a lower estimate does not mean the work is disqualified. I am on the Board of Trustees and we get estimates for snow removal, painting and landscaping and because you hire the lower estimate does not mean that the work is not qualified. Money does not buy better quality. Money may buy both. Just because you hire the lower estimate does not mean that the work is discounted. Even if it is a two man study he would have probably said the study was biased.

Mrs. O'Rourke interrupted and stated that you cannot say what Attorney Dangora would say. Just stick to what you want to say.

Jim Tatosky, Board of Trustee Member, 216 Rangeway Road, Unit # 194, identified himself. Mr. Tatosky explained that he has lived at Swanson Meadows for nine (9) years. He lives right behind Empire Recycling. The grinding and bumping noise has not stopped. You get woken up at 1:30 - 2:00 a.m. and you are startled. We have residents that cannot sleep in the rear bedroom they have to sleep in the front of the house in order to get any peace and quiet. All the windows have to be kept shut. In the spring you can't open your windows because you either get the odor or the smell of exhaust at night. The truck noise is loud. They have heavy equipment and the equipment is running at night. You can hear it. There was an agreement that the trucks would not go to the rear of the building and they are going to the rear of the building. I have seen them. I looked out my window. It is not New Penn it is Empire. I don't know if Mr. Motzkin knows they are doing this. It is Empire doing it. We have several young families with babies that are having physiological problems because they can't sleep. They are startled in the middle of the night by the noise and they scream and cry all night long. All we are asking for is peace and quiet in our neighborhood so that we can enjoy our homes. We don't want to see Mr. Motzkin go out of business. We don't want to see his employees lose their job. All we want is for Mr. Motzkin to be a good neighbor and so far they have not been. We also have had them at many of our Board Meetings and there were all kinds of promises made and none of them have been fulfilled. Thank you

Mr. Motzkin, Sr stated that he has been beaten up enough and would like to talk for himself. Mr. Motzkin explained that he bought the business twelve (12) years ago. I previously ran Sterling Recycling, the recycling company that was here before Empire Recycling. I know about the recycling business. I bought this business for me and my family because I thought we would be set for the rest of our lives. I bought in an industrial area because I thought I would never have these problems. I can't believe what I am going through now. I have been listening to all the health problems. No one knows

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that in the last six (6) months I had two heart attacks over this problem. I have a doctor's certificate to prove it. I have a very bad case of congestive heart failure and this has brought it on heavily. Nobody knows what this is doing to me. I try to do whatever it takes to get along with people. I even made arrangements to put different boxes at different sites so that it there won't be any noise. I have put men in the yard. The yard is chained every night at 10:00 p.m. so they can't drive around the back. I have tried to talk to the neighbors and they never wanted to talk to us. After all the abuse they have given us I don't know if I want to talk to them anymore. We try to be good neighbors. We try to be good citizens. I pay over \$50,000 a year in taxes, I donate to every charity, I have an environmental scholarship for recycling at the high school, I sponsor a little league team, we help the football team at the high school and we donate to every charity that asks us. Whatever it takes we try to help with. Just like the residents at Swanson Meadows don't want to hear that they are stupid for buying a condo near a recycling facility, I don't like to hear that I am a stupid manager for running my company. I have been doing this for fifty-one (51) years. I resent that statement. I am willing to work with the neighbors. I know that they should have never built those condos so close. I know what Rocco Scippa has done because he tried to get me to do some things for him and I didn't. I knew that there was going to be a golf course. Rocco pulled some shady deals to build those condos to make more money. We are a business that tries to grow. Any business wants to grow. We don't have a salesman. You can check our website. DEP knows about our expansion and has given us relief. My attorney who works with DEP is present tonight and can verify my relationship with DEP. All my employees are present because they are afraid that they are going to lose their jobs. I am not the monster that they put in the Boston Globe, I resent that statement but I can live with it. Thank you

Attorney Dangora stated that you have heard from a couple of speakers about how they have been working with us and been supportive. All we are looking for since June is to construct the 3 sided addition. The Swanson Meadows residents have fought us every inch of the way. Then they have the nerve to say that they support us. When the appeal period expires is there going to be an appeal or are we going to be allowed to get a building permit and build the 3 sided shed?

Mr. Deldon stated that we have met with Mr. Motzkin and his son at least 10 to 15 times over the last 5 years. Joe, Jr. came to my house about 2 or 3 months ago to a Board meeting. We have never said at a meeting that we want to put Empire Recycling out of business. We are asking that between the hours of 10:00 p.m. to 7:00 a.m. that the noise be managed so that the residents can sleep and open up their windows. We are afraid of the expansion. We don't know how big the expansion will be. The business has expanded quite a bit. We don't know what the end of the expansion will be. How big can someone get? We don't care what they do.

Mrs. O'Rourke stated that she took a ride over there and drove around the building. I don't know how the trucks could get around the back of the building. There isn't that much room. When you talk about expanding do you mean the amount of trucks that will be coming and going?

Mr. Deldon replied that the volume of tonnage has increased substantially.

Mrs. O'Rourke asked Mr. Motzkin how much tonnage do you handle.

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Mr. Motzkin, Jr. replied that he could not tell accurately. Over the past 2-3 years we have not expanded dramatically. The Board of Health has the tonnage figures that we supply DEP with.

Mr. Berube explained that originally they started out with just paper products. In 2005 they expanded to co-mingled materials such as plastics so there has been an increase in their tonnage. Has the increase been dramatic no, but I would say it has been a steady increase.

Attorney Dangora stated I am looking for a simple yes or no. Are we going to get a building permit this week or are they going to file an appeal?

Mrs. O'Rourke stated that is a good question. However, the building permit has nothing to do with this Board.

Attorney Dangora stated are they going to be supportive of this addition.

Mrs. O'Rourke asked if anyone else from the condo association would like to speak but please don't rehash what someone else has already said.

Cindy Morgida, 216 Rangeway Road, Unit 192, identified herself. Ms. Morgida explained that she moved back to this community in July 2011. I have grown up in this area. This is a community that I know and love. This is a wonderful community. I live with wonderful neighbors. A lot of the things that happened in the past cannot be changed and there are things that we would like to change. I am a working professional. This meeting is important to us as condo owners and also the employees of Empire Recycling. I have sent many many email complaints to Health Agent, Phavy Pheng. I was very descriptive about the banging and clanging and revving noise coming from the trucks. At one time last week I timed the trucks for a solid eight minutes and I tried to open my window to get a video because I have invested in a video camera. I shut the window immediately because of the noxious and nauseating fumes emanating from these trucks. At one of the meetings someone yelled out how do you know it is from Empire Recycling? I know because I can see it with my eyes and I can hear it with my ears and now because the foliage is gone I can see it even clearer. I have been woken at 1:30 a.m. and the noise continues, I am going to work sometimes on 2-2 ½ hours of sleep. I am getting behind the wheel of my vehicle, driving on the highway, pumping gas, climbing stairs and sitting behind my desk. To say it is affecting my personal life and my professional responsibilities is an understatement. I have fallen asleep at my desk. I have fallen down stairs. I have been forgetful. I would get in my car and not remember the road. It has become a health nuisance on the grandest scale. We have young people, children, and elderly that just want to enjoy their backyards and one another. When I first moved in Mr. Motzkin, Sr.

invited me to his facility. I told him I appreciated him doing that. I told Mr. Motzkin that I was concerned because there were some days when it was 75 degrees and I wanted to open my windows but could not because of the odors. My electric bill is increasing. When I told Mr. Motzkin about that he expressed a concern and stated that maybe he would be willing to pay a portion of that increase. Maybe that was in jest.

Mr. Motzkin, Jr, replied it was in jest.

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Ms. Morgida stated then in jest but never the less he said that. The drivers are worried about their jobs and I am worried about my job. We are all working professionals in our own industry. I am worried about my health, personal activities and professional activities. We all want to grow and prosper and live in harmony. Since Tuesday when the reporter from the Boston Globe came the sound level has increased exponentially. I could actually feel my window panes and walls shake. I do not know what the dB(A) level is 150-200 feet away to have my window panes shake. I am not in front of you tonight to complain about the Motzkins or to be a thorn in their side. I am much too busy to do that. I am standing in front of you tonight on 2 hours sleep. I worked a ten and half hour day, worked through lunch and left work early to be here on time. It is important to me that you the ladies and gentlemen of the Board of Health listen to what we are saying and restrict their noises from 10:00 p.m. to 7:00 a.m. not 6:00 a.m. but 7:00 a.m. because it is vital to my health both physically and mentally and to the health of all my community members and to the Town of Billerica. I have never felt more back home in the Town of Billerica than I do now. Thank you for your time.

Mrs. O'Rourke asked Town Counsel, Pat Costello to interpret the Town of Billerica By-Laws.

Patrick Costello, Town Counsel for the Town of Billerica introduced himself. Mr. Costello stated that he has he heard a lot of discussion tonight. Some of which is very relevant to your proceedings and some is not relevant at all. I think the by-law is easily interpretable. What it does is establishes two (2) zones within which measurements of sound are to be had. Sound is something that travels. My interpretation of the by-law for example is if you are located within Noise Zone I which would be on a residential property the measurement or level of sound received at that point in time is the basis for the quantitative analysis. Your Board is acting in a policing function. Your Board is determining whether or not there is compliance with the provisions of the by-law. If sound is heard on a residential property then the maximum allowable exterior sound levels as set forth in Section 23.4 for a Zone I would be applicable. Now because the by-law is very specific in terms of the decibel levels that would constitute a violation, I do think it is encumbered that the Board has before it evidence of what those decibel levels are which is why it is always advantageous in a situation like this to have an engineering report or testimony from an engineer such as you heard. I also think that there is another provision of the by-law that is relevant in ***Section 23.7 B provides that delivery of pickups for commercial or business purposes between 10:00 p.m. and 6:00 a.m. are prohibited unless the noise level of such deliveries or pickups in nearby residential areas does not exceed the noise criteria listed in Section 23.4.*** That language is very clear that the noise level in the residential area as well as determine whether or not there has been excessive noise.

Mrs. O'Rourke asked what about Zone II.

Mr. Costello replied that in Zone II the noise readings are taken on properties other than residential, institutionals, schools and churches. For example commercial and industrial properties are given different noise levels and can be somewhat higher in those areas than in residential areas. I believe that the by-law should be construed to mean that the place where the noise levels are determined is what establishes what zone you are in. If the levels that were recorded by the Board's consultant were

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taken on a residential property on property zoned for residential use and devoted to that use then the Zone 1 requirements would apply. Mr. Costello asked if anyone had any questions.

Mr. Kane explained that there has been talk about the Purchase and Sale Agreement and about an acknowledgement regarding living near an industrial area where there is noise. In regards to the Town of Billerica by-laws and the DEP regulations does that nullify our Town by-law or is it OK and the by-law no longer applies?

Mr. Costello replied no, in my opinion it does not have any impact what so ever. The Board plays a policing role. This is a by-law and in my view it is a good legally enforceable by-law. Your role and your function is to interpret and enforce that by-law. That is all you have been asked to do right now. There have been a lot of discussions about the agreements in the past.

Mr. Kane stated that he wanted to clarify that the by-law is a standing by-law and cannot be waived.

Mr. Costello replied the by-law cannot be waived or superseded in anyway by any prior agreements.

Mr. Kane stated that Attorney Dangora said that Empire has been there. It sounds like they are pleading a grandfather exemption. The DEP's interpretation of the 310CMR *that sources of noise may need to implement mitigation of residences or buildings occupied or developed by where they may be affected by the sources of noise*. It sounds like there is no grandfather piece and there is no language in our by-law. Is that something we should be policing? Is there a grandfather clause in place that would exempt them from our by-law?

Mr. Costello stated in my opinion no. As you stated it is a living by-law. The Board's job is to enforce it prospectively. Sound level is defined in the by-law as the instantaneous airway to sound pressure level. I don't think there is any grandfather provision or exemption from the allocation of the by-law.

Mrs. O'Rourke asked the Board Members if they had any questions. Mrs. O'Rourke asked Mr. Motzkin, Sr. if there is any reason why you can't curtail your hours of operation.

Mr. Motzkin, Sr. explained that the trucks need to start early in the morning to compete with the competition.

Mrs. O'Rourke asked Mr. Motzkin to explain that further.

Mr. Motzkin explained that we need to start our operation and go to their destinations early in the morning. The first truck goes out about 12 midnight and most of the trucks leave at 3:00 a.m.

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Mr. Motzkin, Jr. explained that our stops are required to be picked up at certain hours. It is like the Boston Globe the way they do their printing we have to pick them up before 2:00 a.m. We have to pick up at our stops before they begin their operation for the next day, if not they will hire someone else who will be able to do the job earlier.

Mr. Motzkin, Sr. explained that we have rented space in another area so that the drivers can put the boxes in that area so that we don't make noise in our yard. We are looking for another place that has more boxes so that we can do the same thing. Then we will pick them up later.

Attorney Dangora stated the bottom line is if the Board of Health decision had been followed we would not be here today. You have not issued Certificates of Compliance of the Board of Health decision to the condos. It is an unattended study. If you want to do this properly have someone go back and do it where the study should have been done. I disagree with Town Counsel's interpretation of the by-law, it is ambiguous at best. It talks about uses but not about measures.

Mr. Berube explained that the heart of the matter is the noise problems that the residents of Swanson Meadows are experiencing. All this past history about what wasn't done at Swanson Meadows is irrelevant. The fact of the matter is that we have all these complaints. Empire Recycling has been afforded the opportunity to try to work with the residents at Swanson Meadows and come to a resolution. That hasn't happened. Now it is before the Board and we need to address the matter. We had the noise study performed in order to see if there was compliance. The report came back showing that there are violations, which validates their complaints. We clearly see that there is excessive noise reaching the property line and causing harm to the residents of Swanson Meadows. They can't enjoy their property and they can't sleep at night. It is up to the Board to sustain the order. That is my recommendation. They need to come up with a plan of correction.

Mrs. O'Rourke asked what happens to the 3 sided structure.

Mr. Berube replied that is not part of this.

Attorney Dangora stated that they are going to put up cameras so that Mr. Motzkin can see who is causing this problem. The cameras would be put up and the structure would be built and that would be a proper measure of what the issue is.

Mr. Berube stated that may be a step in the right direction but something more needs to be done. We clearly have a nuisance that needs to be addressed. I recommend that the Board sustains the order.

Mr. Motzkin, Sr., stated that he is willing to have an employee there all night with a cell phone so that the residents from the condos can call directly to him and he can stop the activity immediately.

Mrs. O'Rourke asked if anyone in the audience that has not spoken before had anything to say.

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Dimitri Bondarev, 216 Rangeway Road, Unit #191 identified himself. Mr. Bondarev explained that there is probably about 100 feet of separation between our bedroom windows and the open side entrance to the Empire Recycling facility hangar. The trucks go partially in and drop the material onto the ground creating a loud banging noise. The trucks also idle partially outside the side entrance. The noise of the reverse beeps was loud and sharp. The incidents have happened twice on January 2, 2012 and once on January 7, 2012. I filed the complaints with the Board of Health.

Mrs. O'Rourke asked what is the Board's pleasure.

Mrs. Giroux stated that Empire Recycling needs the opportunity to put the corrections in place. They are above the noise levels and there is a noise issue whether it is a Zone I or Zone II. Will the structure fix everything, no. There may be some other accommodations that need to be made. There has to be a start. Getting the person with the cell phone on site will help and be a start.

Mr. Motzkin, Sr. explained that he is also willing to put the material in the boxes at the other locations.

Mr. Berube stated that you they need to provide a plan of correction.

Attorney Dangora asked if the plan of correction would include the structure.

Mrs. Giroux stated yes, but that is her opinion, there are other Board Members and they have their own opinion.

Mr. Kane explained that the order is to submit a plan of correction within 20 days of the order and implement it within 5 days of it being approved by the Board. Whether you shutdown from 10:00 p.m. to 7:00 a.m. or whether you build a 30 foot wall that is 3 feet thick so there is no sound is up to you. If the order is sustained by the Board then you have twenty days to work with your engineer to come up with a plan.

Mrs. O'Rourke stated that we need a motion.

Mr. Kane made a motion to sustain the order of correction and come up with a plan within twenty (20) days.

Mr. Grady seconded. So voted unanimously.

Attorney Dangora stated for the record we will come up with a plan. What are you going to do about the Board of Health decision in 2001? When are you going to issue Certificates of Compliance?

Mrs. O'Rourke replied they have never asked for a Certificate of Compliance.

Mr. Berube explained that he is not going to get into that discussion because it is irrelevant.

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7:35 p.m. Shaffer Landfill Solar Project – 171 Pond Street – Request Variance for work within the Flood Plain and 100 feet of Flood Plain and Stormwater Management Approval

Mrs. O'Rourke stated the next item on the agenda is Shaffer Landfill Solar Project requesting a Variance for work within the Flood Plain and 100 feet of the Flood Plain and Stormwater Management Approval at Pond Street.

Mr. Waitt presented a map of the 1971 Green Engineering Flood Plain showing the Shaffer Landfill area and the plans for the solar project.

Richard Waitt, Civil Engineer with Meridian Associates, Beverly, MA identified himself. Mr. Waite introduced David Bonnett, Geosyntec Consultants and Rayo Bhumgara a consultant for the applicant Urban Green Technologies Renewable Energy LLC. We are requesting a variance for work within the Flood Plain and 100 feet of the Flood Plain and stormwater management approval. We are also here to review the engineering report from Beta Group and address any comments that they may have regarding the solar project. Mr. Waitt pointed to the 1971 Green Engineering plan that he put together and explained that inside the landfill there are pockets of flood plain. Mr. Waitt pointed to the residential landfill and the commercial landfill on the plan. On top of the landfill which is 100 feet high there is a flood plain. Mr. Waitt pointed to the plan and explained the 2010 existing FEMA line. The proposal is to place solar photovoltaic (PV) modules on top plateau of the existing landfill on both lobes. Mr. Waitt pointed to the plan and explained where the solar modules would be located. The 1971 plan is outdated. Therefore, in talking with Mr. Berube we need to come before the Board and request a technical variance. In going through the Planning Board process Beta Group was hired to review the drainage issues. We are here tonight to address any comments or questions that Beta Group, the Board and the abutters may have.

Mr. Berube explained that Phil Paradis, from Beta Group reviewed the project on behalf of the Board of Health. Phil is going to address stormwater management, flood plain impacts and other environmental impacts. We want to ensure that this project would not disturb the neighborhood and also that the integrity of the cap would be maintained. The last two (2) reports from Phil are included in the Board's package.

Phil Paradis, Professional Engineer with BETA Group identified himself. Mr. Paradis explained that he has reviewed this project for the Planning Board and the Board of Health. This is a neat project for this particular site. The arrays have been designed to sit on top of the cap. The cap is eighteen (18) inches thick and is meant to cover the trash and prevent water from getting into the trash and leaching

out. There are series of swales designed to collect and pipe the water to two (2) detention basins, one on the east side of the landfill along Pond Street and the other on the southwest end. Our major concern is how the array system is going to impact the surface of the cap. There is a thick layer of vegetated grass that keeps the soil in place. The drainage system is working. They have a continuous operation and maintenance plan that needs to be inspected yearly. They also need to maintain any corrective action that needs to be taken on the cap. The arrays consist of two (2) sets of panels placed on top of the cap and stabilized with ballasts consisting of concrete blocks. There will be two sets of ballast

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trays. The ballast trays will vary based on how flat the slope is. When you are on a steeper slope there is a greater chance of sliding down the hill so the proposal is for double sets of ballast trays to prevent sliding and the wind from tipping the panels over. The question we now have is how will the ballast trays affect the grass and how will the runoff affect the cap? Runoff is another concern. Mr. Bonnett has provided us with the Best Management Practices in terms of drip trays. Mr. Paradis gave an example of a site in Concord. It shows that the grass will live. Mr. Paradis pointed to the areas of concern on the plan. The critical areas are beyond the side slope. The ballast trays could redirect the water and provide some minor scouring in particular locations. We have asked the applicant to provide more details for various conditions 0 to 10% and 10% to 15%. We have asked them to provide the details for minor leveling for installation of ballasts on an uneven surface so that water will not be running underneath. We also asked them to provide a copy of the Stormwater Pollution Prevention Plan prior to the pre-construction meeting. We are going to see how this works in the field. The construction of the project is 3-5 months. In order for us to have a handle on how it is going to be impacted, I am suggesting that we meet on site a couple of times a week initially to see how the grass is fairing and how the impact of this project is going. Based on the calculations the drainage will work. It is not changing it is just a minor rerouting of how the water hits the cap. Adjustments can be made in the detention basins so that there will be no increase in runoff on the site. We have asked the applicant to provide some continuous observations throughout the construction to make sure the runoff is not impacting the cap.

Mr. Berube stated then it is safe to say that there are no flood plain issues and the majority of the stormwater management issues have been addressed other than providing a few details.

Mr. Paradis replied yes. No work will be done in the flood plain.

Mrs. O'Rourke asked how thick is the cap.

David Bonnett, Geosyntec Consultants, identified himself. We are part of the construction team. We are the independent quality assurance team. Mr. Bonnett explained that during construction they graded and shaped the underlining soils and then built the cap. The cap is over 30 inches thick. Mr. Bonnett explained the materials used and how much were used to make up the layers of the cap.

Mrs. O'Rourke asked is there any chance that the racking system will not hold the panels.

Mr. Bonnett explained that the racking system will sit on the cap. Mr. Bonnett pointed out and explained the details of what kind of a system would be used. We are talking about a double ballast

system. We talked to the Planning Board that if we have to go further because of stability concerns we could recess it up slightly so there would be some penetration into the top soil area.

Mrs. O'Rourke stated that she is concerned because if we get a lot of snow and it starts to melt the cap will leak. Is that going to happen?

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Mr. Bonnett replied no, because the geo-membrane is below and the activity will only be on the surface.

Mrs. Giroux asked if they have to go into the soil with the ballast system, how deep into the soil will they go?

Mr. Bonnett replied that has not been finalized. A full analysis has not been sent to DEP. There may be a scenario where we do both and use two ballast trays.

Mr. Grady asked are there any similar landfills in this area that we can go by and see.

Mr. Bonnett replied yes. DEP has provided a list of places.

Mr. Grady stated that currently there is a place in Westford but that area is flat.

Mr. Bonnett explained in Westford it is a ground mount which is a flat surface on gravel. They use bigger ballasts which consist of concrete blocks.

Mr. Berube explained that this Board's approval is not the last one. The applicant still has to go for a review before DEP and the Environmental Protection Agency (EPA). I have spoken with both the DEP and EPA and forwarded them all the information from Phil Paradis, the Board's consultant.

Mr. Bhumgara explained that the Planning Board has to approve this project also. DEP is working on fourteen projects and eight are still under review.

Mr. Paradis explained we talked about installing the panels on the slope first so that it will have the longest duration and we could make sure there are no issues.

Mr. Waitt explained that the applicant has filed with DEP and the EPA because it is a superfund site and landfill. Both DEP and EPA have taken control of this project. We submitted a 650 page document with design calculations and the operation and maintenance plan to the Planning Board and BETA Group for review. DEP started their technical review ten (10) days ago. Mr. Waitt explained that the plan has been modeled on many of the projects that have been approved to date by DEP in Massachusetts. We have agreed to monitor the twenty (20) conditions from the Planning Board that Phil has talked about. The safety and stress concerns of the panels are being worked on. The manufacturers of the ballasting system and the geo technical companies are working on new solutions

for the panels. The wind loads that are required by code in Massachusetts have to take up to a minimum of 110 miles per hour. They won't topple over unless you get winds from a category 3 hurricane. We are not doing any excavation.

Mrs. Giroux asked how many panels are there going to be.

Mr. Waitt replied 23,000 panels. There will be 11,500 racks.

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Mrs. Giroux asked where the energy will go that is being created.

Rayo Bhumgara, representing Urban Green Technologies, identified himself. Mr. Bhumgara explained that we are talking about giving the metering credits to the town to save on electricity costs. We are negotiating with the town.

Mrs. Giroux asked what are you anticipating that the savings will be.

Mr. Bhumgara replied we have to look at all the data but we are hoping it will be at least 10%. National Grid will be involved. We are also looking at the schools.

Mrs. Giroux asked about the abutters.

Mr. Bhumgara explained that is not directly connected. The town will benefit not the neighborhood. The town will be able to offset their electric bills using this credit.

Mrs. O'Rourke asked if any abutters would like to comment or share their concerns.

Linda Wiroll, 22 Tomahawk Drive, identified herself. Ms. Wiroll stated that the area where they will be putting the panels on is 100 feet from our house. It is totally open and we are not that far away. We already have water surrounding our property. I am going to have an ugly site in my backyard. I am totally opposed to this. How many homes are near the other sites in Westford and Concord?

Mr. Waitt replied he did not know.

Ms. Wiroll stated that my home is the most open house on this road. What will happen when the water is coming down and the snow is melting and going into my backyard? I live in a split and my downstairs is finished. My backyard already fills with water when it snows and rains. How are they going to guarantee that I will not have problems?

Mrs. O'Rourke asked Ms. Wiroll if she gets water in her basement now.

Ms. Wiroll replied that she has lived there for four (4) years and has never had any water problems.

Mrs. O'Rourke asked Mr. Paradis if he could answer her question.

Ms. Wiroll pointed to her house on the map. Ms. Wiroll asked why hasn't someone from the Board of Health visited the site. I have grandchildren that live with me. Will there be a chance of getting cancer from this site?

Mr. Paradis stated that he could explain the drainage issues. They have provided mitigation and detention basins so that they can control the rate of runoff. There will be no additional flow because of

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this project.

Ms. Wiroll asked if someone could come out and see how close her house is to the landfill. Isn't there some place else that they can put the solar energy panels? I will have to look at this all the time. I knew the dump was there. There is no guarantee that these panels will not sink into the ground. I am requesting that someone come out to my property and look at how close we will be.

Patty Sheehan, 217 Pond Street, identified herself. Ms. Sheehan stated that her concern is if the seal is broken. If it is compromised then what do we do? If I recall correctly this is the second cap.

Mr. Berube confirmed that it is the second cap.

Ms. Sheehan explained we see the dump out back and sometimes in the summer we smell it. At the Planning Board meeting they said if they were going to anchor something down. What is going on? My concern is the breaking of the seal.

Mr. Waitt explained to Ms. Wiroll about the drainage. Whatever comes down from the sky will come down, we can not control that. The landfill not the solar panel is designed to have some runoff on the surface and some runoff over the geo composite. The water will not infiltrate down the landfill. All the water that falls will go 100% into the detention basin. We are not changing that at all. None of the water goes into the landfill itself. The home that we are talking about is 500-600 feet away. Most of the properties are 300-600 feet from the site. Mr. Waitt explained that we have been through a Planning Board process. We originally said at the first meeting that we were not excavating the landfill and we are still not doing that. At the end of the last Planning Board meeting it was discussed that slopes exceeding 10% may need the ballasts anchored into the landfill with a pin. We should have that final design completed tomorrow. There will be two options one would be to have double ballasts or the other option would be a single ballast with pins sunk down into the landfill, no excavations. This is an ongoing process that we are working with BETA Group, Planning Board, DEP and EPA. The scrutiny that this project is getting with DEP and EPA is more than anyone could ever realize. DEP and EPA's only concern is the cap and the integrity of the cap. There is no guarantee. Everybody looking at this project is concerned with the cap.

Ms. Sheehan asked how deep will the pins go into the ground.

Mr. Waitt replied we are still working on the final design and we should have the answer to that soon. The depth will be 0 up to a maximum of 12 inches but we are still working on the final analysis on how deep those pins will go.

Robert Sheehan, 217 Pond Street, identified himself. Mr. Sheehan stated that he does construction work and he knows about grading and fill. Mr. Sheehan discussed the depth of the pins. How could you come before the Board and not have the design finalized?

Cathleen Driver, a resident of Tewksbury identified herself. Ms. Driver explained that half of

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her land is in Tewksbury. I have a horse farm. I do get some water in the spring. Any change in the water level would make my property very wet.

Mrs. O'Rourke asked where in Tewksbury do you live.

Ms. Driver replied on the corner of Chandler Street.

Mrs. O'Rourke replied you are quite a distance away from the landfill.

Mr. Berube asked are you talking about the intersection at Chandler Street and Whipple Road. Mr. Berube stated that he is familiar with the property. I remember the prior owner.

Ms. Driver stated that she has owned the property for six (6) years. Ms. Driver stated that she is concerned with the variance and the flood plain. She is concerned that if the cap is breached in any way, anything that goes into the air it will come over to her property.

Mr. Berube stated that the water would have to come over the tracks first.

Mrs. O'Rourke stated that she can't imagine Ms. Driver being affected.

Mr. Berube stated that he is very familiar with that property. The rear of the property was flood plain and was filled in by the previous owner so that she could construct a paddock for her horses.

Mr. Paradis explained that both DEP and EPA are looking at this project. They both have an interest in making sure the cap is maintained and that there will be no other issues. From the initial time that BETA received the project we have been reviewing the project and its design with our expert consultants and provided comments. The town is being very well protected. No one wants the cap to be ruined. I made a note when I climbed the hill the top is flat. I was concerned with the glare and they told me that only 10% of the light will be reflected. You will not see the first layer.

Ms. Wiroll explained that she has problems with her eyes and light and wears sunglasses when it snows and rains. What if there is a problem with the glare. Am I going to have to sell my house?

Nancy Sulaiman, 1 Maiden Lane, identified herself. Ms. Sulaiman stated that she has been there for 36 years and her granddaughter lives with her. I am very concerned because I hear the pumps going all the time and I can see the landfill from my window. I am concerned with the weight of the panels. How is this going to affect our health? I am totally against this project.

Alfred Manzelli, 189 Pond Street, identified himself. Mr. Manzelli stated there is solar radiation coming off of those panels. Has anyone considered the health affects of the neighbors in that area? If you can't answer that question there is something wrong. We are all concerned with the cap.

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Mr. Waitt explained that he has worked on 14 or 15 projects of significant size across Massachusetts and this question has never been raised before. The manufacturers have never claimed that radiation comes off the panels. Mr. Waitt replied this issue doesn't exist.

Mr. Paradis explained that he did some research regarding what the issues would be. The issues on landfill would be the overtopping, sliding on the landfill and the glare. There were no issues with solar radiation.

Mr. Manzelli stated there is glare and radiation is reflecting the sun. We all know that sun has radiation. We are not supposed to go out in the sun because of the radiation and sun causes cancer.

Mr. Waitt explained what they are trying to do to create power. The theory is that the radiation (UV) is being absorbed by the panels.

Mr. Manzelli stated that you all have a vested interest. You call a spike a pin. This town will be sued if twenty years from now cancer cases show up in that neighbor. How will the power get from the unit to where ever it is going?

Mr. Waitt stated that our purpose tonight is to request a variance for work in and within the flood plain and stormwater approval. There are 20 conditions that were raised which BETA Group is involved with. I am here tonight to answer any questions that the Board or the abutters may have to abate their concerns. Mr. Waitt stated that he would answer Mr. Manzelli's question regarding how the power would get from the unit to where ever it is going. Mr. Waitt pointed to the plans and explained the modules would be installed directly on top of the landfill cap over approximately half of the site. Energy will be collected from ground mounted modules via electrical conduit to a load center and transformer that would be connected overhead to the National Grid network. The electricity is above ground.

Mr. Bhumgara reiterated that if something goes wrong the Federal Government EPA and the State Government DEP will be responsible because it is a superfund site. DEP and EPA would not approve this project if they did not think that it would work. Our approval is conditional upon getting approval from DEP and EPA.

Mr. Manzelli asked if the cap is pierced the water will flow down to the Middlesex Canal. Are we exposing Wilmington to potential toxins? I ask this Board to consider all the liabilities. I have already decided to sell my house. If this project is approved I think Billerica will be in big trouble.

Claire Babineau, Chandler Street, Tewksbury identified herself. Ms. Babineau asked what percentage of the plateau will be used in the landfill. How much grass will be left?

Mr. Waitt pointed to the plan and explained the full build out area. The plateau area represents under 25% of the entire capped landfill. The full build out will be about 50%.

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Ms. Babineau stated so you are going to cover 50% of the landfill.

Mr. Bhungara replied up to 50%. Whatever we do we have to get approval from BETA Group, DEP and EPA.

Mr. Waitt explained that the ground disturbance will be significantly less than 50%.

Ms. Babineau asked if 50% of the grass will take up more water.

Mr. Waitt explained that there will be no change in the rainfall. The flow will be changed slightly and be controlled by the stormwater that was designed for this project.

Ms. Babineau asked about the detention basins.

Mr. Paradis explained that more water will be stored in the detention basins.

Mr. Waitt explained that more water will be stored for the peak flow.

Mrs. O'Rourke asked if anyone else had any questions.

Ms. Wiroll asked is there going to be one row at the top or is there going to be row after row coming down the side.

Mr. Waitt explained and pointed to the plans that everything in orange is rows of solar panels.

Ms. Wiroll asked about the other rows and how many rows would there be.

Mr. Waitt pointed to the plans and explained in detail the rows of panels.

Mr. Berube explained that there will be an aggressive operations and maintenance plan. One of the requirements of DEP and EPA is that there has to be a financial mechanism in case a problem does develop down the road so that it will be quickly addressed.

Mrs. O'Rourke asked that a motion be made.

Mr. Grady made a motion to grant a Variance of Billerica Board of Health Rules and Regulations, Chapter 5, Sections 5.5.005 (1) and (2) in order to construct a solar facility at the Shaffer Landfill on Pond Street in and within one hundred (100) feet of Flood Plain and Stormwater Management Approval pursuant to Board of Health Rules and Regulations, Chapter 6 based on the following findings of fact and pursuant to the following conditions:

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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, Sections 5.5.005 (1) (2) and Chapter 6 inclusive.
- 2) The Board of Health conducted a public hearing on January 9, 2012 and properly notified abutters in accordance with Billerica Health Regulations, Chapter 1, Section 1.2.007.
- 3) The applicant proposes to construct a solar facility on top of a former landfill that was capped in 2003. The scope of the project includes the installation of approximately 23,000 photovoltaic (PV) modules on a racking system placed on the surface of the cap and stabilized with ballast consisting of concrete blocks.
- 4) The project was reviewed by Phil Paradis, Jr. of BETA Group, Inc., the Board of Health's Consulting Engineer, for potential impacts to the Flood Plain as well as compliance with applicable drainage regulations.
- 5) The Board of Health will impose reasonable conditions to ensure the project is constructed in accordance with approved plans.
- 6) 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 number 1, 2, 3, 4, 5, 6, 8, 9, 10, 11, 12, 13, 14, 15, 17, 18, 19, 21, 24, 25, 26, 28 and 29 in accordance with the Board of Health regulations and Special Conditions:

- A) All construction must be in accordance with plans submitted for review and approval, prepared by Meridian Associates dated November 14, 2011 and revised to December 19, 2011 and stamped by Richard E. Waitt, Jr. RPE#34776.

Mrs. Giroux seconded. So voted unanimously.

7:45 p.m. Stephanie's Pizzeria Restaurant – 504 Boston Road – Appeal Hearing for Notice of Violation and Order for Correction

Mrs. O'Rourke stated the next item is Stephanie's Pizzeria Restaurant, 504 Boston Road, Appeal Hearing for Notice of Violation and Order for Correction.

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Mr. Berube explained that at the last minute he received a letter from Haroutaian Law Office requesting a postponement of the hearing for Stephanie's Pizzeria due to a scheduling conflict. Stephanie's Pizzeria Restaurant will be placed on the agenda at the February Board of Health meeting.

8:00 p.m. Wicked Cheesy Pizza Restaurant – 240D Nashua Road – Request Waiver of Regulations

Mrs. O'Rourke stated the next item is Wicked Cheesy Pizza Restaurant, 240D Nashua Road, requesting a Waiver of Regulations.

Brian Schofield, owner of Wicked Cheesy Pizza Restaurant identified himself. Mr. Schofield explained that he is going to be occupying the restaurant at 240D Nashua Road. The tenant before me was cooking a lot of seafood which required using a lot of grease. The only fried foods we will be cooking are chicken wings and french fries. We will not be cooking seafood. Baker Commodities will pick up and dispose of our grease.

Mr. Berube explained that Gary has taken a look at what they have proposed and will make a recommendation.

Mr. Courtemanche stated that he recommends that the Board grant the Waiver of Regulations for the exterior grease trap because there have not been any problems. In the event of a grease blockage or other significant violations relative to the maintenance of the grease recovery system the applicant shall be required to install an exterior grease trap to serve the food establishment.

Mr. Schofield explained that he has spoken to Gary about cleaning, monitoring and maintaining the interior grease trap. A log will be kept for the Board of Health to inspect. Mr. Schofield explained that he would work with the Board of Health to train his staff on the proper procedures used to minimize the grease going into the trap.

Mrs. O'Rourke asked the Board Members if they had any questions about Wicked Cheesy Pizza. The Board Members did not have any questions.

Mrs. Giroux made a motion to grant a Waiver of Billerica Health Regulation, Chapter 5, Section 2.2.001 that requires the installation of an exterior grease trap to serve Wicked Cheesy Pizza Restaurant at 240D Nashua Road. If there is any problems with the interior grease trap the waiver will be revoked immediately 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 is within an area subject to protection under the Board of Health's Rules and Regulations, Chapter 5, Section 2.2.001.
2. The applicant proposes to use the existing alternative grease recovery unit (GRU) located within the food service establishment. The interior grease recovery units will be monitored and cleaned

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every month. A maintenance record shall be kept and made available for inspection by the Board of Health.

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

1. These conditions, imposed by the Board of Health, cannot be changed without the written approval by the Board of Health and only after a proper public hearing is held.
2. This order does not relieve the permittee or any other person of the necessity of complying with all other applicable federal, state or local statutes, ordinances, by-laws or regulations.
3. This order does not grant any property rights or any exclusive privileges; it does not authorize any injury to private property or invasion of private rights.
4. Failure to comply with all conditions stated herein, and with all related statutes and other regulatory measures, shall be deemed cause to revoke or modify this order.
5. 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 inquiries, conduct inspections, or take actions deemed necessary to protect the public health and the environment.
6. The applicant shall provide a copy of a maintenance agreement with a qualified service company to pump and maintain the interior grease traps every month or more often to ensure proper functioning of the grease recovery system. The applicant shall keep all pumping and maintenance records and make them available for inspection by the Board of Health.

7. The food service establishment (FSE) shall work with the Board of Health to implement Best Management Practices (BMP's) to prevent or reduce the discharge of Fats, Oil and Grease (FOG) and to the building drain and the sewage disposal system. The FSE shall train the staff to ensure that the BMP's are followed. The owner and employees of the FSE shall sign an acknowledgement of BMP's for Food Service Employees and submit the acknowledgements to the Board of Health.
8. This waiver shall be subject to periodic review by the Board of Health to ensure compliance with applicable rules and regulations.
9. In the event of a grease blockage or other significant violations relative to the maintenance of the grease recovery system, this waiver shall be **immediately** revoked. The applicant shall be

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 required to install an exterior grease trap to serve the food establishment. The exterior grease trap shall be designed and constructed in accordance with the State Environmental Code, Title 5.
10. This waiver can not be transferred from one person to another person, from one food establishment to another or from one type of operation to another.

Mr. Kane seconded. So voted unanimously.

8:00 p.m. Dora Cafe – 240C Nashua Road – Request Waiver of Regulations

Mrs. O'Rourke stated the last item is Dora Cafe, 240C Nashua Road, requesting a Waiver of Regulations.

Victor Felix, identified himself. Mr. Felix explained that it will be the same operation as Dolly's Donuts and we are looking for the same waiver.

Mr. Berube explained that the request is the same request as Wicked Cheesy Pizza.

Victor Felix, Dora Cafe, 240C Nashua Road, identified himself. Mr. Felix explained that the interior grease trap will be monitored and cleaned every month. A log will be kept for the Board of Health to inspect. Any grease that is cleaned out of the trap will be properly disposed of in designated grease barrels that will be located outside the premises. Mr. Felix explained that he and his employees will adhere to the careful procedures of minimizing the grease going into the trap.

Mrs. O'Rourke asked the Board Members if they had any questions about Dora Cafe. The Board Members did not have any questions.

Mrs. Giroux made a motion to grant a Waiver of Billerica Health Regulation, Chapter 5, Section 2.2.001 that requires the installation of an exterior grease trap to serve Dora Cafe at 240C Nashua Road. If there is any problem with the interior grease trap the waiver will be revoked immediately 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 is within an area subject to protection under the Board of Health's Rules and Regulations, Chapter 5, Section 2.2.001.
2. The applicant proposes to use the existing alternative grease recovery unit (GRU) located within the food service establishment. The interior grease recovery units will be monitored and cleaned every month. A maintenance record shall be kept and made available for inspection by the Board of Health.

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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

1. These conditions, imposed by the Board of Health, cannot be changed without the written approval by the Board of Health and only after a proper public hearing is held.
2. This order does not relieve the permittee or any other person of the necessity of complying with all other applicable federal, state or local statutes, ordinances, by-laws or regulations.
3. This order does not grant any property rights or any exclusive privileges; it does not authorize any injury to private property or invasion of private rights.
4. Failure to comply with all conditions stated herein, and with all related statutes and other regulatory measures, shall be deemed cause to revoke or modify this order.
5. 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 inquiries, conduct inspections, or take actions deemed necessary to protect the public health and the environment.
6. The applicant shall provide a copy of a maintenance agreement with a qualified service company to pump and maintain the interior grease traps every month or more often to ensure proper functioning of the grease recovery system. The applicant shall keep all pumping and maintenance records and make them available for inspection by the Board of Health.
7. The food service establishment (FSE) shall work with the Board of Health to implement Best Management Practices (BMP's) to prevent or reduce the discharge of Fats, Oil and Grease (FOG) and to the building drain and the sewage disposal system. The FSE shall train the staff to ensure

that the BMP's are followed. The owner and employees of the FSE shall sign an acknowledgement of BMP's for Food Service Employees and submit the acknowledgements to the Board of Health.

8. This waiver shall be subject to periodic review by the Board of Health to ensure compliance with applicable rules and regulations.
9. In the event of a grease blockage or other significant violations relative to the maintenance of the grease recovery system, this waiver shall be **immediately** revoked. The applicant shall be required to install an exterior grease trap to serve the food establishment. The exterior grease trap shall be designed and constructed in accordance with the State Environmental Code, Title 5.

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10. This waiver can not be transferred from one person to another person, from one food establishment to another or from one type of operation to another.

Mr. Kane seconded. So voted unanimously.

Open Microphone

Mrs. O'Rourke asked if anyone was present for open microphone.

No one in the audience was present for open microphone.

Mr. Kane made a motion to adjourn. Mr. Grady seconded.

The Board adjourned at 10:50 p.m.

Respectfully submitted,

Sandra Giroux
Secretary

Joanne M. White
Recording Clerk