

**BOARD OF HEALTH MINUTES**  
**February 13, 2012**

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

**ACCEPTANCE OF MINUTES**

Mr. Kane made a motion to accept the Meeting Minutes of January 9, 2012. Mrs. Giroux seconded. Four (4) voted in favor, one (1) vote abstained (Robert Reader).

**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 month of January 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. Giroux made a motion to accept the Public Health Nurse, Christine West's report.

Mr. Kane seconded. So voted unanimously.

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

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Mr. Berube stated that Phavy is present to answer any questions that the Board may have.

Mrs. O'Rourke asked about 220 Nashua Road and the permit that has not been obtained for the oil burner work.

Ms. Pheng explained that the Fire Prevention Bureau issued a permit. The complaint was filed because they did not have a permit and the sleeve line was not installed. The problem has been resolved and the case has been closed.

Mr. Berube stated that since the last meeting there have been twelve (12) noise complaints from Swanson Meadows.

Mr. Reader asked if 78 Pinedale Avenue is ready to connect to town sewer.

Mr. Berube explained that 78 Pinedale Avenue is not prepared to connect. Phavy is present to explain what happened in court this morning.

Ms. Pheng explained that she met Attorney Haroutunian in Lowell District Court. The case is still pending in probate court to obtain full ownership of the property. The case will be continued for another month that will give Mr. Mitchell time to hire an engineer to draw up the plans for the proposed connection to town sewer. The next court date is scheduled for March 12, 2012.

Attorney James Haroutunian, identified himself. Attorney Haroutunian explained that we came to an agreement for a one month extension. We are trying to get the other homeowner to sign over the rest of the property.

Mrs. O'Rourke asked if Mr. Mitchell has the deed to the house.

Attorney Haroutunian replied that Mr. Mitchell has  $\frac{3}{4}$  quarters of the ownership of that house. The other quarter is involved in (3) three separate probates.

Mrs. O'Rourke asked when that will be settled.

Attorney Haroutunian replied we are fighting with three women. They are claiming that the house should have been theirs and they want some money.

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

Mr. Kane asked if the Board Members could have a breakdown of the number and types of complaints that the Health Department is receiving from Swanson Meadows.

Mrs. O'Rourke asked what type of complaints the Board of Health is receiving.

Ms. Pheng replied it is the same banging and screeching noise that we have been receiving all along.

Mrs. Giroux asked are the complaints coming in on one specific day of the week or over a couple of days. Is there a pattern?

Ms. Pheng explained that the complaints come on different days and at different times. There is no pattern.

Mrs. Giroux made a motion to accept Health Agent, Phavy Pheng's report.

Mr. Grady seconded. So voted unanimously.

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

Mr. Reader asked when is Cumberland Farms scheduled to open.

Mr. Courtemanche replied the first week in April. They are about eight days ahead of schedule due to the good weather we have been experiencing.

Mrs. O'Rourke asked Mr. Courtemanche how could he possibly investigate a complaint about a waitress spitting in a customer's food at Mickee's On The Water.

Mr. Courtemanche explained that he went to the establishment and talked to a couple of employees. Then I conducted a food safety inspection and interviewed the owner. According to several people the complainant was a former employee who was asked to leave the establishment. The next day the anonymous complaint was filed at the Board of Health office.

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

Mrs. Giroux made a motion to accept Health Agent, Gary Courtemanche's report.

Mr. Grady seconded. So voted unanimously.

### **FY11 Annual Report**

Mrs. O'Rourke stated the next item is the FY11 Annual Report. Mrs. O'Rourke asked the Board Members if they had any questions regarding the Annual Report.

The Board Members did not have any questions.

**Healthy Communities Tobacco Control Program – Compliance Check Update**

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

Mr. Berube explained that Ron Beauregard from Healthy Communities sent a copy of the Billerica Compliance Checks update as of February 7, 2012. Twenty-six (26) compliance checks were performed. There has been only one sale to a minor at Fill N' Chill, 653 Boston Road. Included in the Boards packages is a copy of an article by Ron Beauregard regarding the sale of cheap single cigars. The sale of cheap single cigars also contributes to drug abuse as well.

Mr. Reader asked who is going to do something about the sale of cheap single cigars.

Mr. Berube explained that the article was written by Ron Beauregard and at some point we will review the tobacco regulations and propose some changes to address the sale of single cigars.

Mrs. O'Rourke asked if the smoke shop at the Billerica Mall sells single cigars.

Mr. Berube replied that he thought so.

Mrs. O'Rourke stated that they are going to move to another location in the mall.

Mr. Berube explained that an agreement has been made that when they move they are going to comply with our tobacco regulations.

Mrs. O'Rourke explained that there are going to be three stores that will have their own entrances, the cleaners, the smoke shop and Subway.

Mr. Berube stated that the Health Department has not received any plans regarding a Subway going into the Billerica Mall.

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

The Board Members did not have any questions.

**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 a letter from GZA GeoEnvironmental, Inc. on behalf of Eastern Terminals, Inc. and one from the Department of Environmental Protection (DEP). GZA is requesting an extension of the January 30, 2012 Interim Deadline because the contractor for the Iron Horse Park PRP group is planning on paving part of the

Eastern Terminals property this spring. DEP granted them their request and extended the deadline until August 31, 2012. Mr. Berube explained that he has contacted DEP to find out why the paving project would delay Eastern Terminals from finishing this work.

Mrs. O'Rourke asked if any of the Board Members had visited the site.

Mr. Berube replied not recently.

Mr. Reader replied that he went over a couple of months ago. Mr. Reader asked have they started to do any of the cleanup work.

Mr. Berube replied that all they had to do was complete the risk assessment and revise and record the Activity and Use Limitation (AUL). According to the letter they have revised and completed the risk assessment but they need to file the revised AUL. I have talked with the Environmental Protection Agency (EPA) and they do not know why the paving project would interfere with these requirements. The cleanup seems to be dragging out.

**Empire Recycling Draft Plan of Correction**

Mrs. O'Rourke stated the next item is Empire Recycling Draft Plan of Correction.

Mr. Berube explained that along with the draft plan that is included in the Boards packages is a copy of my response. Mr. Berube asked if everyone on the board has received their summons from Attorney James Dangora. Empire is appealing the Boards decision.

Mr. Reader asked if Attorney Dangora's office drafted the plan.

Mr. Berube replied that he did not know who drafted the plan.

Mr. Kane asked is there a dated receipt when the Board of Health received the Draft Plan of Correction.

Mr. Berube replied he received it on January 19, 2012.

Mr. Reader asked is there any permit that allows them to operate 24 hours.

Mr. Berube replied that he does not know of any permit that governs their hours of operation.

Mr. Reader commented so they can operate 24 hours a day.

Mrs. O'Rourke replied that according to the Planning Board they can operate 24 hours a day. Mrs. O'Rourke stated that she talked to the Zoning Board of Appeal (ZBA) and was told that only the new addition had specific hours of operation.

Mr. Berube replied there has been no new addition to the building in the past.

Mr. Reader asked can a business come into the town and automatically operate 24 hours a day.

Mr. Berube explained that apparently this business came into town and set up in an industrial zone. I don't know if they got a special permit from the ZBA or anything from the Building Department.

Mr. Reader asked is there something we can send to them and be more stringent. They should cooperate. The people at the Condos need to sleep and Empire Recycling needs to operate their business. The summons is not the best approach for Empire to use. It seems to me that they are trying to bully us.

Mrs. O'Rourke suggested that the Board Members go over the draft. I don't know what finishing the 3 sided building addition and have it sound proofed is going to do.

Mr. Reader stated that the draft is not professionally done.

Mrs. O'Rourke asked what is the purpose of installing cameras.

Mr. Berube stated that he has asked for more details regarding the draft plan.

Mrs. O'Rourke asked what is the purpose of installing light noise back up alarms on loader and trucks.

Mr. Grady replied to turn the volume down.

Mrs. O'Rourke explained having a supervisor on duty equipped with a cell phone for complaints.

Mrs. O'Rourke stated that item #6 is to relocate early morning containers to an offsite location is a good idea.

Mrs. Giroux asked where they are going to relocate the containers to.

Mrs. O'Rourke replied that she thought the containers could be relocated to where the old UPS building is across the street. I thought behind the building was already paved. Install a fence behind the building to prevent the trucks from driving behind the building between the hours of 10:00 p.m. to 6:00 a.m.

Mr. Reader stated why should Swanson Meadows have to pay \$90,000 for the proposed 20 foot high soundproof fence when they are not making the noise. Empire Recycling is making the noise.

Mr. Berube explained that it is his understanding that the wall would have to be built on Swanson Meadows property.

Mrs. Giroux asked will the revised plan be ready for the Board of Health meeting on March 5, 2012.

Mr. Berube replied I don't know what their response is going to be considering they are appealing the Board's decision.

Mr. Kane stated that at this point they have another twenty (20) day window to respond by so they need to respond by March 1, 2012.

Mr. Berube replied we should have a response before the next meeting.

Mr. Kane stated so hopefully we should have some kind of response from Superior Court whether they have issued a stay for the order. If the court has not issued a stay for the order then we are still the body of jurisdiction and we should be able to continue our process.

Mr. Berube stated that he is very confident in the Board's decision. I read the summons and the argument is the same as presented at the last meeting. The only thing that is new is the 1972 Noise Control Act and I don't think it has any bearing on this matter.

Mr. Reader asked once Empire knew about the noise study, the noise stopped. Why can't the noise stop permanently?

Mr. Berube replied that he did not know.

### **Substance Abuse Prevention Committee**

Mrs. O'Rourke stated the last item under Board of Health Business is the Substance Abuse Prevention Committee.

Stephen Moss provided the Board Members with a copy of the Executive Summary of the 2011 Billerica Youth Substance Abuse Survey.

Stephen Moss, Member of the Substance Abuse Prevention Committee, identified himself. The Substance Abuse Committee has been around for 4 to 5 years. The first survey was done in 2007. This is our second survey. The survey is very comprehensive. The 2011 survey was done with Billerica youths in the 6<sup>th</sup>, 8<sup>th</sup>, 10<sup>th</sup> and 12<sup>th</sup> grade. We know what drugs they use, how much they use and the frequency of use. The survey is compared to the Billerica 2007 data and the 2011 National Norms. Active Substance Use has decreased dramatically since 2007. Mr. Moss explained the decrease in each category. A huge problem is the use of pain killers or illicit drugs in Billerica and other surrounding towns. By the Senior year in High School 12% of the youths have had experience with narcotics. About

5% of the Billerica youth in the 8th grade are in danger of having narcotic or illicit drugs in their life style, 15% are in danger of marijuana/cannabis addiction and 32% are in danger of alcoholism. In both surveys we measured the student's attitudes. There are two types of attitudes, one is a healthy attitude which means drugs are bad and the other is an unhealthy attitude which means that there is no risk in taking drugs. Mr. Moss explained that the protective factors are worse than in 2007 and the risk factors improved from 2007. In 2011 by the time the students get to the 6<sup>th</sup> grade they are about the National Norm. Mr. Moss explained the 4 goals. The first is reducing the middle school substance abuse, the second is improving school recognition and awards for prosocial behavior, the third is identifying early and assisting high substance abuse risk in youths and their families and the fourth is to improve key parent/student substance abuse related attitudes. We want to educate and work on the key attitudes. Mr. Moss asked if anyone had any questions.

Mr. Kane stated that you said about 15% of the 6<sup>th</sup>, 7<sup>th</sup> and 8<sup>th</sup> graders are likely to use alcohol and marijuana. What is the percentage of the students who did not start using drugs in the 6<sup>th</sup>, 7<sup>th</sup> or 8<sup>th</sup> grade?

Mr. Moss replied that if the students start using drugs when they are 15-17 years of age the percentage is 6%. If they start using drugs when they are 18 and seniors in high school the percentage is 2%. Starting at an early age is the problem.

Mr. Kane stated that he did not understand how pain relievers use in 12<sup>th</sup> grade plummeted 300%.

Mr. Moss explained how the percentages were figured.

Mrs. O'Rourke thanked Mr. Moss for his presentation

**7:15 p.m. Stephanie's Pizzeria Restaurant – 504 Boston Road – Appeal Hearing for Notice of Violation and Order for Correction**

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

Attorney James Haroutunian provided the Board with a package explaining Stephanie's Pizza Mitigating Factors.

Attorney James Haroutunian, Billerica, identified himself. Attorney Haroutunian explained that he was representing Stephanie's Pizza. Stephanie's Pizza and Sichuan Gourmet provide a feed to the main sewer line that comes down to Boston Road. Last year an incident occurred and grease was found at the main connection. The Board of Health issued an order to Stephanie's Pizza and Sichuan Gourmet. We are here tonight to distinguish both those restaurants in their use and their discharge of grease. 80% of Stephanie's food is takeout or delivery. Sichuan is a dine-in restaurant. Stephanie's uses 100% paper products and plastic utensils whereas Sichuan uses ceramic plates and bowls and has a dishwasher. The only dishes done in Stephanie's are the small condiment trays, the sub sandwich setup and the utensils



used to prepare food and cut food. Attorney Haroutunian explained the location of the sinks in the kitchen. Both of the sinks are tied into the interior grease trap. This facility does not do dishes. The oil from Stephanie's is recycled commercially. The usage of the grease going into the main line is significantly less than Sichuan's. The trays for the pizza have a paper lining to catch most of the grease and oil. We would like to file for a Waiver of Regulations but tonight we are here to address the issue of the Notice of Violation and Order for Correction. We have been informed that Sichuan Gourmet has agreed to install an exterior grease trap. My client does not own the building. He is a tenant in that building. The cost of the exterior grease trap to be installed and hooked up starts at \$15,000, my client does not have the financial capability to handle that extra expense. Attorney Haroutunian stated that he would answer any questions the Board Members may have.

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

Mr. Grady asked are there any records showing how often the existing grease trap is cleaned.

Mr. Grigorov replied that he has had the existing grease trap cleaned.

Mr. Grady asked do you have the receipts. Mr. Grady stated that he needs proof.

Mr. Grigorov replied he did not have the receipts. Mr. Grigorov explained how he puts the grease in a container outside the grease trap. If the interior grease trap is full it will shut down.

Attorney Haroutunian explained how the interior grease trap works with the container.

Mr. Grady asked Health Agent, Gary Courtemanche, if he has looked at the interior grease trap machine.

Mr. Courtemanche explained that when he goes into a restaurant he opens up the grease trap and looks in. That interior grease trap needs to be cleaned every three (3) months by a professional. The automatic big dipper grease trap that he has is supposed to be emptied on a daily basis. Since I have done the inspections at Stephanie's Ivan has done a good job in taking care of the grease trap. There have not been any problems. In looking at the previous inspections that was not always the case.

Mr. Grady asked Mr. Grigorov how long have you owned the restaurant.

Mr. Grigorov replied 12 years.

Mr. Berube stated that Lorraine Sanders and George Gullage from the WasteWater Division are present tonight and they can testify that there have been problems with this plaza.

George Gullage, Sewer Department identified himself. Mr. Gullage explained that he has gone up there once a year for small backups in the line. We go up there every two years and it is a full clean job with our truck.

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Attorney Haroutunian clarified that the cleaning was at the main pipe that goes up to the facility. Each store in that facility does not have its own pipe it all goes down to the main pipe. The pipe serves both restaurants in the plaza. The other restaurants in town such as KFC, Emerald Rose and Newtowne Grille have an exterior grease trap because they have a larger interior dining room that is not the case with Stephanie's it is a smaller dine in and takeout restaurant. In looking back at the records there was a backup at Jim's Quick Stop in 2007 but that was due to some items that were being flushed down the toilet. The records do not show anything specifically pointing to Stephanie's Pizza

Mr. Berube stated that a number of the sewer backups have been related to grease build up in the sewer lines. This is not something new.

Mr. Gullage confirmed that the problems at that plaza have always been grease in the sewer line.

Mr. Berube explained that this order was carefully considered. We have had meetings in the past where we met with the establishment owners, as well as the landlord and George Gullage to discuss this issue and nothing has been done by the establishments or the landlord. The last meeting was held in January 2010 and at that meeting I informed everyone that the next time this happens there is going to be some serious repercussions. That day has come. They have known about this for several years and have had ample opportunity to address this problem and nothing has been done. Attorney Haroutunian stated that Stephanie's has an interior grease recovery system. When the Board adopted the regulations requiring exterior grease traps, as an alternative, a grease recovery system could be used as long as the system was maintained. However if the grease recovery system was not maintained they would have to install an exterior grease trap. I believe that is the case at Stephanie's. Attorney Haroutunian's argument is that Sichuan Gourmet creates most of the grease problem. That may be true but we cannot determine who creates what percentage of the grease problems and we cannot discriminate. We have a problem at this plaza. There are two (2) food establishments that we inspect and we have to ensure that they comply with our regulations and have an exterior grease trap so that we can monitor this problem more closely. It was fortunate that through our FOG program we discovered this grease blockage. If not we would have been shutting down all the businesses on Boston Road and putting people out of their homes. Granted this is going to be an expense to the food service establishments but what about the loss to the other businesses in that area and the expense to people who would be put out of their homes until the sewer line was cleaned up. Sichuan has complied with our order and I think that Stephanie's should do the same.

Mrs. O'Rourke asked what is Sichuan Gourmet going to do.

Mr. Berube explained that Sichuan has already submitted plans for an exterior grease trap.

Mrs. O'Rourke asked is there going to be one exterior grease trap for everybody.

Mr. Berube replied that Sichuan is going to install their own exterior grease trap and will be responsible for its maintenance.

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Mrs. O'Rourke stated so Stephanie's would have to do the same. Why can't there be one grease trap for both businesses and they could share the cost.

Mr. Berube replied we would have the same problem that we have now. We would not be able to distinguish who is responsible for the greater discharge of grease.

Mrs. O'Rourke stated if there was a problem then both the establishments would have to share the expense.

Mr. Berube replied the only way that would work is if the landlord stepped forward and took responsibility and then billed the tenants. Unfortunately the landlord has not stepped forward.

Mrs. O'Rourke asked have you sent the landlord a letter.

Mr. Berube replied yes he is aware of this entire situation. George Gullage and I met with the landlord and he has been very adamant about blaming Sichuan Gourmet and he is not going to do anything. Over the years we have encouraged the establishments to address this matter. No efforts have been made and we have seen too many sewer backups at that location.

Mr. Reader asked Attorney Haroutunian if he has approached the landlord and asked him to cooperate.

Attorney Haroutunian replied not yet. There have been other similar independent pizza establishments in town that have received a Waiver of Regulations for the exterior grease trap. I have reviewed some minutes on line and came across the establishments on Route 4. There is a donut shop and a pizza restaurant and when the waiver was granted to them a similar discussion was held about the interior and the exterior grease traps. If you put a Chinese restaurant in that plaza you would have the same problem. I request that Stephanie's be taken into consideration. I think that in time it will show that there will be no further backups. If there are further backups then further action should be taken.

Mr. Berube replied that in the case of the Route 4 establishments there is no history of any problems in the past. That is not the case with Stephanie's. We have a history and problems in the past with Stephanie's. If you read the files there have been issues with the maintenance of the grease recovery system and reports of grease build up inside the establishment and overflowing grease barrels behind the building. There is a history of prior problems and that is what justifies this order.

Attorney Haroutunian explained that he has looked into the prior reports and there have been some issues in that entire plaza with Sichuan Gourmet, Jim's Quick Stop and Stephanie's. I am requesting that consideration be given to this establishment in the plaza.

Mrs. O'Rourke asked would it be possible for Sichuan Gourmet, Jim's Quick Stop and Stephanie's to get together and put in one exterior grease trap.

Mr. Berube replied it would be possible if the landlord stepped in.

Mrs. O'Rourke stated forget the landlord, he isn't going to do anything.

Mr. Berube replied that he does not want to be put in the position that if there is a problem who is going to be responsible.

Mrs. Giroux stated that they would all be 33% responsible. Regardless of the problem they would all share the responsibility of the cost.

Mr. Berube replied that just makes it a difficult enforcement situation for the Board of Health. If each establishment has their own exterior grease trap then it would be easier for us to trace the problem. That is the problem now, we can not trace the problem but we know it is coming from the plaza. If they each have their own grease trap, then we will know where the grease is coming from.

Mrs. Giroux stated that Sichuan is installing their own grease trap. So now Stephanie's and Jim's Quick Stop would be sharing the responsibility.

Mr. Berube stated that Jim's Quick Stop is not required to have an exterior grease trap.

Mr. Reader stated if Sichuan installs their own grease trap and then there is a problem it is their problem.

Mr. Berube replied that is not fair to single out Sichuan Gourmet.

Mrs. O'Rourke stated that we all know that Chinese Restaurants have a tremendous amount of grease.

Mr. Berube stated that he does not want to have another problem with a grease blockage in the sewer line. It makes us look bad.

Mr. Reader asked has grease backups been more prominent where there are Chinese Restaurants.

Mr. Gullage stated it does not matter. Mr. Gullage explained that we have had grease backups at the Emerald Rose and Newtowne Grille now they have an exterior grease trap. They maintain it and there have not been any problems.

Mr. Reader stated so you can not determine that more of the problem is coming from Sichuan.

Mr. Berube replied we have to be careful we don't want to open ourselves up to a law suit. We can not discriminate. A food establishment is a food establishment. We require that all food establishments have an exterior grease trap regardless of whether they are a big generator or a small generator of grease. A lot depends on the maintenance of the grease trap and the grease recovery

system. Maybe Stephanie's is not as much a contributor as Sichuan Gourmet. However, that is debatable but still they are a contributor. We have a violation. There is a past history at Stephanie's. This is nothing new.

Mr. Reader commented that the cost is a significant amount.

Mr. Berube stated what about the cost if we have to shut down businesses because of a sewer blockage or if people are put out of their homes. The town could be held liable if we do not step up and do something to enforce the issue. If there is another sewer blockage we would have the potential for a lawsuit from any businesses that would have to close and the people that we have to put out of their homes.

Mr. Reader asked would one exterior grease trap solve the problem.

Mr. Grady asked is there a way for us to let Sichuan put in their exterior grease trap and then photos could be taken before and after Sichuan puts in their grease trap. Then when George does his usual maintenance, if the pipe is loaded with grease, then Stephanie's is going to have to install an exterior grease trap. We will then have photos to prove that Sichuan was the one generating the grease. The Board has granted waivers for situations similar to this one. Mr. Grigorov needs to improve his record keeping.

Mr. Grigorov stated that he is going to hire a professional company to come in once a month. I am going to make sure my employees clean the grease trap every day.

Mr. Grady stated there has got to be a way that we can mitigate the situation.

Mr. Berube stated that the problem is that plumbing is a mess at this plaza. There is no way you can trace a problem to any one establishment. I think we have to sustain the order and require the exterior grease trap be installed. We tried the alternative grease recovery system and it did not work.

Mr. Grady asked what does Sichuan have.

Mr. Berube replied they have the alternative grease recovery system the same as Stephanie's and it did not work.

Mrs. Giroux asked is Sichuan willing to put the exterior grease trap in.

Mr. Berube stated the other alternative is that if they don't comply I will go after their permit to operate a food service establishment.

Mrs. O'Rourke asked is there anyway we can put pressure on the landlord.

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Mr. Berube replied that we have had meetings with the landlord in the past. We regulate the food establishments. I suppose I could shut down the entire plaza to get his attention. If we didn't have this FOG program we would have never discovered this problem until it was too late.

Mrs. O'Rourke stated the Board is just trying to make it easier for Mr. Grigorov to stay in business.

Mr. Berube stated we have gone over this in the past and they did not take the hint.

Mr. Grady asked what made Sichuan put in the exterior grease trap.

Mr. Courtemanche explained that Sichuan Gourmet owns four (4) other restaurants. The owner of Sichuan told me that he had just put an exterior grease trap in his restaurant in Framingham and it works so much better than when he had the interior grease trap. But he was more than willing to install the exterior grease trap because he realizes that every town is trying to address this problem.

Mrs. O'Rourke asked what is the initial cost of an exterior grease trap.

Mr. Courtemanche replied that he did not know.

Mr. Gullage replied the cost varies on the size of the tank and how much pipe has to be run. It is approximately \$10,000 to \$20,000 for a good size system.

Mr. Grigorov stated that we do not produce much oil. We use a lot of paper products.

Mrs. Giroux asked when is Sichuan planning on installing their grease trap. Do you have a time frame?

Mr. Courtemanche replied next week. We have just approved the plans and they need to hire a contractor.

Mr. Kane asked Gary about the differences between a full service sit down restaurant versus pizza and sub shop takeout.

Mr. Courtemanche explained that he has had twenty (20) years of experience in the restaurant business also. My restaurant was similar to Stephanie's, there were no dishes. It was the food prep that generated a lot of the grease. A lot of that stuff spills onto the floor and then is mopped into the floor drain and into the grease trap. It does not have to always go through the dish machine. As a matter of fact the dish machine keeps the grease liquefied at 160 degrees and does not cool down until after it passes the interior grease trap. When it cools down it congeals. It is not a major difference but it is a difference. It is also the food that is prepped that goes into the floor drains.

Mr. Kane asked how do you compare the two establishments.

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Mr. Courtemanche replied it is not 80% Sichuan and 20% Stephanie's. It is more likely 60% Sichuan and 40% Stephanie's. I am not an expert.

Mrs. Giroux stated that Gary is more of an expert than the Board.

Mr. Berube commented that he did not think it should be the town's responsibility to clean up the mess.

Attorney Haroutunian stated that I think there is an opportunity to see what happens and use the new camera technology to identify and see how it progresses. If it doesn't then all arguments are off the table. The food prep is mostly frozen food.

Mr. Girgorov explained that he uses mostly frozen foods except for salads.

Mrs. Giroux asked Gary when Sichuan puts the grease trap in what is the earliest you would see a benefit from it.

Mr. Courtemanche replied he was not sure, maybe three (3) months.

Mr. Gullage replied 3 months. We make them put a vehicle in and open the manhole and check the pipe and the grease trap. That is how we can tell if it is getting bypassed from the grease trap.

Mrs. Giroux stated the pictures were taken in October so if Sichuan installs their grease trap in March you should be able to look at the grease trap in June and let us know what is happening.

Mr. Gullage explained that usually we will only see a small amount of grease. We will need to go in with our camera and see if there is a large amount of grease.

Mr. Reader asked when you open the manhole will you be able to observe what is coming from Sichuan.

Mr. Gullage explained that there will be two (2) pipes. One will be the main line that is coming out now and the other will be Sichuan. If Stephanie's put in a grease trap then there would be three (3) lines.

Mrs. Giroux asked if Stephanie's puts in an exterior grease trap what would the time frame be from getting a set of plans drawn up to the actual installation.

Attorney Haroutuian replied that he did not know.

Mr. Courtemanche stated about 4 or 5 months.

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Mrs. Giroux asked would it be feasible to let Sichuan take the first step and install the exterior grease trap since they have already started the process and review the situation in six months. But if there is any hint of an issue then Stephanie's would have to put in an exterior grease trap immediately.

Mrs. O'Rourke asked the Board Members if they thought that would be fair.

The Board Members agreed.

Mr. Berube asked who is going to pay the other half of the cost recovery. Sichuan Gourmet paid \$1,500.00 towards the cost recovery. There is still another \$1,500.00 that needs to be paid to the Town.

Mrs. Giroux replied Stephanie's has to pay that amount.

Mr. Berube replied they have not paid that yet.

Mr. Grady asked is that for the entire plaza or the individual's amount.

Mrs. Giroux replied each establishment has to pay \$1,500.00.

Mr. Berube suggested that the order be held in abeyance for a period of six (6) months and Best Management Practices be implemented to reduce the grease in the operation.

Mrs. Giroux replied yes and a cleanup plan should be in place this week.

Mrs. O'Rourke stated the \$1,500.00 cost recovery fee needs to be paid by February 17, 2012.

Mr. Berube stated for us to monitor this there will be a cost to the town for the use of the camera in the line so there should be some reimbursement to the town when it is time to go back in and check out the line in six (6) months.

Mr. Reader asked will you put a camera in the manhole.

Mr. Gullage explained that he has to hire a police detail because it is in the middle of Boston Road and it has to be done during the day. If there is too much grease in the line we will have to first clean it out and then go back in with the camera and check the service connection.

Mr. Reader asked when is the next time that you will be scheduled to check out the line.

Mr. Gullage replied the fall of 2012.

Mrs. O'Rourke reiterated that you will have a professional person come in to clean on a monthly basis and keep the records. Mrs. O'Rourke asked the Board Members if they agreed with the proposal.



Mr. Grady reiterated the proposal with all the conditions for the Board.

Mrs. Giroux made a motion to sustain the order for six (6) months allowing Sichuan Gourmet to install their exterior grease trap, Gary will monitor Stephanie's to ensure that they are complying with the order and if there are any signs of an issue they will have to immediately install an exterior grease trap. Under the guidance of Health Agent, Gary Courtemanche Stephanie's Pizzeria Restaurant shall implement Best Management Practices (BMPs) to prevent or reduce the discharge of Fats, Oil and Grease (FOG) to the building drain and sewer system. The fine must be paid by February 17, 2012. All receipts and contracts for the maintenance plan will be turned into the Health Department before the Board of Health meeting on March 5, 2012.

Mr. Reader seconded. So voted unanimously.

Mrs. O'Rourke asked Mr. Grigorov if he understood what the Board was proposing.

Mr. Grigorov stated that he did not understand what grease line they will be monitoring.

Mr. Gullage explained that we will go up the main line and take a camera and look at where your pipe ties into the main line.

**7:30 p.m. Daniel Sweeney – 28 Elsie Avenue – Request a Variance for work within the Flood Plain**

Mrs. O'Rourke stated the next item is Daniel Sweeney, 28 Elsie Avenue requesting a Variance for work within the Flood Plain.

Daniel Sweeney, 28 Elsie Avenue, identified himself. Mr. Sweeney explained that he is seeking a variance to demolish an existing house and construct a new home. The existing home at 28 Elsie Avenue has been there since 1936. On numerous occasions the existing home has been inundated with water because it was built too low. The existing structure is not salvageable. The proposed house will be raised up on piers or pilings to allow the water to flow underneath and recede without any damage to the property. Currently the existing house is twenty-seven (27) feet closer to the river than the proposed house. We moved it back to get it out of the vegetated wetlands. I have been working with the Conservation Commission since April 2011. This is the final draft. I am meeting with the Conservation Commission on February 22, 2012. All the trees that will be removed during construction will be replaced. I am also going to plant in the new vegetated wetlands in the 25 foot setback which will provide for a natural area and more habitat for wildlife. The proposed house will be an improvement.

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

Mr. Grady asked if the proposed house was going to be smaller than the original.

Mr. Sweeney replied it will be the same square footage, however the way it is being tapered it will be slightly smaller.

Mr. Grady asked is there going to be a garage.

Mr. Sweeney replied no.

Mr. Grady asked if all utilities will be located on the first floor.

Mr. Sweeney replied that all the utilities will be located on the first floor and the house will be all electric. There will be no propane gas tanks or oil.

Mr. Reader asked if the proposed house was going to be on town sewer.

Mr. Sweeney replied that the existing house is currently on town sewer. It has a low pressure system with a pump installed in the driveway area and it will be pumped up.

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

Mr. Berube stated that it will be an improvement to the neighborhood and the proposed house will be raised above the flood plain. It will be connected to town sewer and town water.

Mr. Kane asked how high above grade will the first floor be.

Mr. Sweeney replied approximately four (4) feet above grade.

Mrs. O'Rourke asked if any abutters were present. No abutters were present.

Mr. Grady made a motion to grant a variance of the Board of Health Rules and Regulations, Chapter 5, Section 5.5.005 (1) to raze the existing single family dwelling and construct a new single family dwelling at 28 Elsie Avenue in the Flood Plain based on the following findings of fact and pursuant to the following conditions:

#### **FINDINGS OF FACT**

- 1) The work described in the applicant's request is within an area subject to protection under the Billerica Health's Rules and Regulations, Chapter 5, Section 5.5.005 (1).
- 2) The applicant proposes to raze an existing single family dwelling located in the Flood Plain in order to construct a new single family dwelling. The new construction shall comply with the National Flood Insurance Program (NFIP) and the State Building Code requirements for construction in the Flood Plain. All utilities in the proposed dwelling will be located above the flood plain. The proposed dwelling will be serviced by town sewer and water.
- 3) The proposed house will be constructed on piers to allow the unimpeded flow of flood waters underneath the structure. The lowest habitable floor (living space) shall be located at or above the Green Engineering Flood Plain (GEFP) elevation of 122 (NGVD 1929).

- 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 Ducharme & Dillis Civil Design Group, Inc. dated December 6, 2011, revised to February 6, 2012 and stamped by Gregory S. Roy, RPE# 46070.
- B) All utilities in the proposed dwelling shall be located above the GEFP base flood elevation of 122 (NGVD 1929).
- C) Erosion and sediment control measures shall be implemented and maintained in all areas disturbed by construction activity including but not limited to construction and waste material storage areas. Erosion and sediment control structures shall be installed prior to beginning demolition and construction.

Mr. Reader seconded. So voted unanimously.

**7:40 p.m. Gina Fernandez – Piece “ah” Cake – Request a Waiver of Regulations**

Mrs. O'Rourke stated next item on the agenda is Gina Fernandez, Piece “ah” Cake requesting a Waiver of Regulations.

Gina Fernandez, 4 Harnden Road, identified herself. Ms. Fernandez explained that originally Piece “ah” Cake was located at 737 Boston Road and now I am planning to move to 880 Boston Road Plaza with a partner. I am requesting a Waiver of Regulations for the exterior grease trap. I had an interior grease trap at the other location and never had a problem with it. Everything is disposable. I will be selling ice cream and ice cream cakes. There will be very minimal washing, only ice cream scoops.

Mr. Berube explained that if the Board recalls Ms. Fernandez was granted a variance for her business at 737 Boston Road.

Ms. Fernandez explained that she would be doing less at this location. We have scaled down the business. I went from 1800 square feet to 700 square feet. There will not be a seating area. The only items that I will have are ice cream and ice cream cakes.

Mr. Berube explained that Gary has visited the new location and conducted an inspection.

Ms. Fernandez explained that when she was looking at this place I called Gary to look at this new location he came down and told me what I would need to do.

Mr. Courtemanche explained that he has not had any problems with the grease trap at Piece 'ah' Cake. Gina keeps the grease trap clean even though it does not get much use.

Mrs. O'Rourke stated this will be strictly take out.

Ms. Fernandez replied it will only be take out.

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

Mr. Kane made a motion to grant a variance of the Billerica Board of Health Rules and Regulations, Chapter 5, Section 2.2.001 that requires the installation of an exterior grease trap to serve the proposed food service establishment to be located at 880 Boston Road, Unit #9 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 reopen an ice cream shop formerly located at 737 Boston Road.
3. The operation will not generate any significant grease (e.g. there will be no baking on site; food will be served on single use items; primarily takeout business, etc.)
4. The applicant proposes to install an alternative grease recovery unit (GRU) within the proposed food service establishment (FSE). 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.
5. Previously, the Board of Health granted a variance of Board of Health Rules and Regulations, Chapter 2, Section 2.2.001 to the applicant for the prior location of the FSE.
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 6, 10, 14, 15 and 25 in accordance with the Board of Health regulations and Special Conditions:

- A. The interior grease trap shall be installed in accordance with the Massachusetts State Plumbing Code, 248CMR2.00. The grease trap shall be accessible for inspection and maintenance.
- B. 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.
- C. 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 and acknowledgement of BMP's for Food Service Employees and submit the acknowledgements to the Board of Health.
- D. This waiver shall be subject to periodic review by the Board of Health to ensure compliance with applicable rules and regulations.
- E. 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.
- F. Any change or expansion of the food service operation (e.g. menu change, etc.) requires prior approval of the Board of Health.
- G. 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. Reader seconded. So voted unanimously.

**7:45 p.m. John Litwinsky – 1 Mitchell Road – Appeal Hearing for Notice of Violation and Order for Correction**

Mrs. O'Rourke stated the last item on the agenda is John Litwinsky, 1 Mitchell Road, Appeal Hearing for Notice of Violation and Order for Correction.

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John Litwinsky, 324 LaGrange Street, West Roxbury, MA identified himself. Mr. Litwinsky explained that the home belongs to his mother. She is currently in a nursing home because she had a stroke in July 2011. I was not aware of the septic system problem until December 2011. I am present tonight because I really do not know the next step to take. I did receive some literature in the mail about engineers and septic system people. I spoke with Mr. Berube today and I told him I did not know what to do. I am trying to save the home for my mother. It looks like she will need to have care 24 hours a day because she also has dementia.

Mrs. O'Rourke asked who is living in the house now.

Mr. Litwinsky replied the house is a duplex and there are people living in both sides. When I got the call about the problem in December, I was told to immediately pump the system, which I did. Then I received another call on February 7, 2012 and I had the system pumped again. I have made calls to septic people to see what needs to be done. I don't have a lot of money to replace the system. We want to try to repair it. I don't know if that is possible. There are a number of different condo associations in the area that are connected to sewer. I asked Mr. Berube who I should speak to about seeking permission to connect to the sewer system. Mr. Berube gave me some good ideas. He suggested that I hire an engineer to see if the system can be repaired or if it needs to be replaced. As soon as I identify which condo association I should speak with then I will know which way to go. If they say yes, I will need to know how much will it cost? If they say no then the system will have to be repaired or replaced.

Mrs. O'Rourke asked Mr. Berube if that would be possible.

Mr. Berube explained that the condos have private sewer and he does not know which condo association Mr. Litwinsky could tie into.

A discussion was held on the location of 1 Mitchell Road.

Mr. Litwinsky explained that it was originally part of Mitchell Estates. My mother has lived on Mitchell Road since 1967.

Mr. Reader asked can Mr. Litwinsky get permission to tie into the sewer system at the condo association.

Mr. Berube replied that is something we have to look into because you need permission from one of the condos to connect into their own private sewer.

Mr. Reader asked what do you mean by private sewer, doesn't sewer go through the town?

Mr. Berube replied it discharges through the town but the town is not responsible for maintaining the system. It is the condo association's responsibility to maintain. The condo association owns their pumping station.

Mrs. O'Rourke asked have you contacted the sewer department.

Mr. Litwinsky replied he has not contacted anyone yet.

Mrs. O'Rourke stated the sewer department should be able to tell you where the closest sewer tie in would be.

Mr. Berube explained that as Mr. Litwinsky mentioned I spoke with him this afternoon and I am going to try to get him the contact information that he needs and do as much as we can to help him.

Mr. Litwinsky explained that in the mean time I will pump the system as often as necessary. I am trying to do what I am supposed to do in this situation.

Mrs. O'Rourke stated the sewage must be coming from one half of the house because your mother is not living in the other half.

Mr. Litwinsky explained that someone just moved into his mother's half of the house.

Mr. Reader stated you will have to keep pumping it until the problem is resolved.

Mr. Berube explained that Mr. Litwinsky is not disputing the order, he is looking for some help.

Mrs. Giroux asked Mr. Berube what his recommendation would be.

Mr. Berube replied as long as Mr. Litwinsky is pumping out the system as needed, I think in sixty (60) days we will have an answer and know what can be done. The worst case is they (tenants) will have to vacate the premises.

Mr. Litwinsky asked is there possibility the system can be repaired.

Mrs. O'Rourke explained that you will need to get someone out there to look at the it to see if it can be repaired.

Mr. Berube stated that the system is discharging to the surface of the ground so the system is failed.

Mr. Reader stated that it sounds like the system needs to be replaced or tie into sewer.

Mrs. Giroux made a motion to sustain the Order for Correction issued December 21, 2011 with the following modifications:

**ORDER**

- 1) The time frame to correct the violations stated in the order shall be extended from thirty (30) days to sixty (60) days.
- 2) The septic system shall be pumped monthly or whenever necessary to alleviate any discharge of sewage to the surface of the ground.

Mr. Grady seconded. So voted unanimously.

**Open Microphone**

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

A resident in the audience asked about the summons from Empire Recycling.

Mr. Berube explained that he would be discussing the summons with Town Counsel and the Town Manager. Other than that I can not comment.

Mr. Kane explained that the Health Department received the summons on the first business day, which is Monday, February 13, 2012 and Mr. Berube has not had the opportunity to discuss this matter with Town Counsel or the Town Manager.

Martial Frechette, Swanson Meadows, Member of the Board of Trustees, identified himself. Mr. Martial stated that he had a question for Richard Berube. Mr. Martial explained that in your letter to Empire Recycling it states that if appropriate action in response to this letter was not taken further action would be taken. What is the next step? Are we going to be able to fine Empire Recycling for these violations?

Mr. Berube explained that the report states if they did not follow through with a plan of correction or we were not satisfied at that time we would have to consider taking further legal action against them. At that point I would sit down with Town Counsel and decide how we would want to proceed and that discussion would be with the Board as well.

Mr. Frechette explained that it states in the Noise By-Law that as an official agent of the Town of Billerica you have the right to fine these people. The draft is a joke. They are just getting away with it. Now you are just giving them another twenty (20) days. Are you going to continue just giving them another twenty (20) days? Are they going to drag it out as long as they can? Can we hurt them financially so they will comply?

Mr. Berube replied that is something we have to determine at that particular time. We have to determine what the most effective way is whether we take them to court or fine them or both. That is something we will have to determine. What would be the best course of action? I can not speak about that at this point.



Mr. Reader made a motion to adjourn. Mrs. Giroux seconded.

The Board adjourned at 8:50 p.m.

Respectfully submitted,

Sandra Giroux  
Secretary

Joanne M. White  
Recording Clerk