

**BOARD OF HEALTH MINUTES**  
**March 5, 2012**

Marie O'Rourke, Chair, called the meeting to order at 7:00 p.m. Also in attendance were Sandra Giroux, Secretary, 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 February 13, 2012. Mr. Kane seconded. So voted unanimously.

**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 February 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.

Mrs. Giroux asked if there were any details regarding the Salmonella case.

Mr. Berube explained that the Salmonella case cannot be discussed publicly however Christine West is following up on this case. It is a resident that arrived from out of the country. Christine has added a copy of the National Drug Take Back Initiative that will take place on April 28, 2012.

Mrs. Giroux requested that a copy of the Drug Take Back Initiative be electronically sent to her.

Mrs. O'Rourke stated that she read in the paper that there was going to be a drop off center located at the Police Station.

Mr. Berube replied that through the Upper Merrimack Public Health Coalition a kiosk was purchased and would be installed at the Police Department. As soon as we receive permission from Department of Environmental Protection and Drug Enforcement Administration (DEA) the kiosk will be attached to the wall in the lobby of the Police Department.

Mr. Berube stated the next report is from Health Agent, Phavy Pheng. Mr. Berube asked the Board Members if they had any questions about Phavy's report.

Mrs. O'Rourke asked about the status of 78 Pinedale Avenue.

Mr. Berube explained that 78 Pinedale Avenue is going to court on Monday, March 12, 2012. I suggested that they hire a civil engineer to design a plan for the sewer connection so that once the probate issues are settled they can move forward with the sewer connection.

Mrs. Giroux stated that she had a question about 36 Sterling Road. Is it one resident or multiple residents that are complaining about the noise?

Mr. Berube explained that it is one resident that is making the majority of complaints. Mr. Berube commented that the Health Department has not received any complaints in the last five (5) days.

Mrs. O'Rourke asked if the Board Members had any other questions about Phavy's report.

The Board Members did not have any other questions.

Mrs. O'Rourke asked the Board Members if they had any questions regarding Health Agent, Gary Courtemanche's report. Mrs. O'Rourke commented that a lot of progress has been made at the Cumberland Farms building.

Mr. Courtemanche stated that they are ready for the grease trap inspection.

Mrs. Giroux asked where is Tacos To Go going to be located.

Mr. Courtemanche replied it will be located at 880 Boston Road near the new Piece "ah" Cake establishment.

Mr. Grady asked if a grease trap was being installed at the Ninety Nine on Boston Road because he drove by a couple of times and noticed excavation equipment at that location.

Mr. Courtemanche replied that they already have an exterior grease trap. Mr. Courtemanche explained that the sewer pipe collapsed and they had to do a lot of excavating work behind the bank and the shopping plaza at 700 Boston Road.

Mrs. O'Rourke asked Gary about the problem at 8 Kenmar Drive.

Mr. Courtemanche explained that it was a housing complaint that he followed up on when Phavy was out. The work has been completed and the owner has complied with the order. The court hearing on March 6, 2012 was cancelled.

Mrs. Giroux made a motion to accept the three (3) Health Department Activity Reports.

Mr. Grady seconded. So voted unanimously.

### **Water Conservation Committee Update**

Mrs. O'Rourke stated the next item is an update from the Water Conservation Committee.

Mr. Kane explained that the Water Conservation Committee has been working on addressing our non-compliance with our usage permit from Department of Environmental Protection (DEP). Our current water source is the Concord River and we are licensed by DEP to draw water from the Concord River. The Town of Billerica permit was modified in November 2010. The Town is required to achieve water usage of less than 65 gallons per person per day. In 2010 the Town had a residential usage of 67gallons per person per day therefore we are not in compliance with our use limitations. It triggered a requirement that we institute water conservation measures including limitations on outdoor watering and promoting water conservation. The only way for our current by-law to be in compliance is if we are very restrictive from May 1st through September 30th and not allow any outdoor watering at all. The Committee has developed a new by-law proposal to be presented at Fall Town Meeting. The main difference is that instead of watering on the odd and even days, all nonessential outdoor water usage will be allowed two (2) days per week at night. Those days would be decided by the Selectmen. The water department has no preference as to which days watering would be allowed. Daytime watering usage would be allowed one (1) day per week. Failure to comply with the DEP permit requirements can result in fines up to \$25,000.00 per day which represents a potential of \$9,125,000.00 per year liability to the Town if DEP chose to enforce the fines. It is rare for them to issue a fine but it has been done. DEP can cancel our permit however I don't know if that has ever been done. The proposed by-law addresses the Stage I, II and III levels of mandatory water conservation. Mr. Kane explained how the committee based their proposed by-laws for water resource limitations. The communication will be extremely challenging to keep updated. Even though this is outside the scope of the Board of Health, being on this committee I felt that it was important to communicate this information to the Board Members. After reviewing the packet if anyone has any comments or suggestions I will submit them to the committee. The proposal has been presented to the Selectmen. It will be presented to the Conservation Committee within the next month. The Water Conservation Committee is looking for a vote in support of the proposed by-law from the Board of Health.

Mr. Berube asked how long do we have to submit our comments.

Mr. Kane replied as long as the Board needs. This will be presented at the Fall Town Meeting.

Mr. Berube asked were these stages modeled after some other community.

Mr. Kane replied no, we just modified our current stages. The committee made changes to model the DEP permit requirements.

Mrs. Giroux asked who will be the police authority if someone is watering at the wrong time.

Mr. Kane replied that does not change it remains with the Police Department, the Water Department and I think the Board of Health agents have authority to issue fines. I will check on that.

Mrs. Giroux asked how are you going to allow a resident to water two (2) days per week.

Mr. Kane replied it will be a set two (2) days for everyone. The Selectmen will set the scheduled days.

Mrs. Giroux asked what if it rains.

Mr. Kane replied once the days are scheduled they will not change. If it rains great you will have more water. It would be too complex to vary days and would not be effective. Our goal is to be effective with our permit.

Mrs. Giroux stated that her concern is the enforcement. The Policemen and the Board of Health Agents have better things to do than enforce the water conservation by-law.

Mr. Kane replied that the Police Department is not the primary enforcement agency.

Mrs. O'Rourke commented that a neighbor will call when they see a resident watering at the wrong time.

Mr. Kane replied the most common source of complaints come from neighbors. Mr. Kane stated if any of the Board Members had any suggestions or comments to submit them to him and he would bring them to the attention of the committee.

Mrs. Giroux asked about the exclusions for businesses.

Mr. Kane explained the exclusions for businesses.

Mrs. O'Rourke suggested that the Board review and discuss the proposed by-laws at the next Board of Health meeting.

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

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

Mr. Berube explained that Ron Beauregard from Healthy Communities sent a copy of the latest compliance checks that were performed in Billerica. Out of the thirty-two (32) establishments that have been checked, only two (2) establishments sold to a minor and have been fined. Fill N' Chill and Walgreen's are the two establishments that sold to a minor. Both fines have been paid. The remaining establishments will be checked by the Food and Drug Administration (FDA).

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

Mrs. Giroux stated that she had a question about the compliance report for the Mobil on the Middlesex Turnpike. When the clerk asked to see an ID, what the persons age was and if the sale was made all the answers were no, how did the clerk determine not to sell a tobacco product to that individual?

Mr. Berube replied that the important thing was that a sale did not take place. Mr. Berube stated that he would ask Ron what transpired at the Mobil Station.

Mrs. O'Rourke stated that a couple of the establishments had the same responses. Mrs. O'Rourke asked if anyone had any other questions.

The Board Members did not have any questions.

**Stephanie's Pizzeria Restaurant Update**

Mrs. O'Rourke stated the next item is Stephanie's Pizzeria Restaurant Update.

Mr. Berube explained that Stephanie's paid the cost recovery fee and have a signed contract with a professional company to pump and maintain their interior grease system. Mr. Grigorov signed a letter stating that he would implement and train his employees about the Best Management Practices under the guidance of Health Agent, Gary Courtemanche. Gary will monitor and follow up on that condition of the Boards approval.

Mrs. O'Rourke asked if any of the Board Members had any questions about Stephanie's Pizzeria.

The Board Members did not have any questions.

**Empire Recycling Update**

Mrs. O'Rourke stated the last item under Board of Health Business is Empire Recycling Update.

Mr. Berube explained that Empire Recycling is appealing the Boards decision and Town Counsel is handling the response. Included in the Boards package is a copy of the response letter from Empire Recycling regarding my comments about their draft plan. Gary and I visited the site to check on the operation at the invitation of the Motzkin's. We heard the new back up alarms that were installed. It is not the constant beeping noise like before.

Mr. Courtemanche explained how the alarms worked, the less background noise, the less audible the alarm is.

Mr. Berube explained that if it is real quiet you would have to stand beside the truck to hear the noise.

Mrs. Giroux asked would the residents at Swanson Meadows be able to hear the alarms.

Mr. Courtemanche replied only if the trucks are banging or there were other trucks in the yard at the same time.

Mr. Berube the he did not think you would hear the alarm unless you were standing by the truck.

Mrs. O'Rourke asked about the 3 sided structure.

Mr. Berube replied that they have not received a building permit for the 3 sided structure. Empire has replaced all the existing bumpers (at the loading docks) with new thicker rubber bumpers in order to mitigate any noise that may occur when a truck backs up to the building. The owner is negotiating to buy a piece of property on the other side of Sterling Road to park their trucks.

Mrs. O'Rourke asked is that the old UPS building.

Mr. Berube replied yes.

Mrs. O'Rourke stated that is where the trucks are parked until 7:00 a.m.

Mr. Berube commented maybe that will resolve this matter. I think that Empire is looking to resolve this matter so that it will not be a long court process.

Mrs. Giroux stated that she understands and feels that Empire is making an effort to resolve this matter.

Mr. Berube explained that Mr. Motzkin is just trying to conduct his business and wants to stay in Billerica. He hired a night time supervisor and nobody is calling him. The residents at Swanson Meadows refuse to cooperate. They do not want to help Empire Recycling at all.

Mrs. O'Rourke stated that what Mr. Motzkin has presented shows good faith on his part to resolve this situation.

Mrs. Giroux commented that it appears that the residents at Swanson Meadows will not be happy until Empire Recycling leaves the area.

Mr. Berube stated that if it is a long legal process through the courts he could not see how Swanson Meadows would support this action because there are only a couple of buildings being impacted.

Mrs. Giroux stated that she cannot see how Swanson Meadows would come up with their portion of the construction because that would increase their assessment and condo fees.

**Billerica Health and Wellness Fair**

Mr. Berube explained that the Health Department will have a table at the Billerica Health and Wellness Fair on March 31, 2012 from 10:00 a.m. to 2:00 p.m. at the Billerica Elks on Webb Brook Road. Christine West and Joanne White will be present to hand out bags containing health related information such as Lyme disease, sun care pamphlets, sharps disposal information, medication take back initiative, blood pressure and cholesterol information, septic system and stormwater management pamphlets. Last year Christine brought the vaccine to the Health Fair, however the turnout was very low so this year Christine will schedule appointments for anyone that would like to come to the office for an immunization shot. There will be a lot of interesting health and recreational wellness booths at the fair.

**7:15 p.m. Christos Christakis – DJ's Place – 265 Boston Road – Request a Waiver of Regulations**

Mrs. O'Rourke stated next item on the agenda is Christos Christakis, DJ's Place, 265 Boston Road, requesting a Waiver of Regulations.

Christos Christakis, 4 Vasa Street, North Billerica, identified himself. Mr. Christakis explained that he was present to request a Waiver of Regulations for DJ's Place, 265 Boston Road. The current establishment was formerly known as Chris's Ice Cream. In 2000, the Board granted a waiver for the exterior grease trap. The establishment has an existing interior grease trap. We are changing the name to DJ's Place. The establishment will include the sale of coffee along with the sale of ice cream.

Mrs. O'Rourke asked Gary Courtemanche what kind of a grease trap does Chris have.

Mr. Courtemanche explained that he has met with Chris and discussed the menu. The menu will include mostly prepared items such as donuts, bagels and muffins and egg sandwiches. No food prep is required with the items that will be sold. Based on that I recommend that the waiver be granted.

Mrs. O'Rourke asked what kind of a grease trap does have now.

Mr. Courtemanche explained the grease trap is an interior plumber's trap underneath the three (3) bay sink.

Mrs. O'Rourke asked how often do you have the grease trap cleaned.

Mr. Christakis replied once a year.

Mr. Courtemanche explained that when he met with Chris and looked at the grease trap it was in good condition. If the Board grants the waiver it should include the same restrictions as Wicked Cheesy and Doras Café. The interior grease trap will need to be cleaned every three months by a professional cleaner.

Mrs. O'Rourke asked where will the sandwiches be purchased at.

Mr. Christakis replied that the sandwiches will be made at the establishment but the items will be already prepared and cooked. We will get most of our supplies from a supplier like Sysco. We will just warm the sandwiches up.

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

The Board Members did not have any questions.

Mr. Berube stated that he agreed with Gary and did not think an exterior grease trap was necessary as long as Mr. Christakis follows the same conditions as Wicked Cheesy, Doras Café and Piece "ah" Cake. The items that will be produced will not require a lot of food prep and will not generate a lot of grease.

Mr. Kane made a motion to grant a waiver of Billerica Health Regulations, Chapter 5, Section 2.2.001 that requires the installation of an exterior grease trap to serve the proposed food service establishment (FSE) to be located at 265 Boston Road, Unit A 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 change the name of an existing ice cream shop (formerly Chris's Ice Cream), remodel the FSE and change the menu to include coffee, pastries, breakfast and lunch items and desserts.
3. The operation will not generate any significant grease (e.g. there will be no baking from scratch on site; limited food preparation; primarily ready to eat food items; etc.)



4. The applicant proposes to utilize the existing interior grease trap within the proposed food service establishment (FSE). The interior grease trap 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 Determination of Applicability relative to a waiver of a grease trap installation to the applicant for the prior FSE (Chris's Ice Cream) at its meeting of September 13, 1999.
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 applicant shall provide a copy of a maintenance agreement with a qualified service company to pump and maintain the interior grease trap 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.
- B. 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.
- C. This waiver shall be subject to periodic review by the Board of Health to ensure compliance with applicable rules and regulations.
- D. 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.
- E. Any change or expansion of the food service operation (e.g. menu change, etc.) requires prior approval of the Board of Health.
- F. 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. Grady seconded. So voted unanimously.

**7:20 p.m. Kathleen Dumais – 1 Grandview Road – Appeal Hearing for Notice of Violation and Order for Correction**

Mrs. O'Rourke stated the next item is Kathleen Dumais, 1 Grandview Road, Appeal Hearing for Notice of Violation and Order for Correction.

Mr. Berube explained that he received a letter from Kathleen Dumais requesting a postponement because she was having surgery. The hearing will be rescheduled to the April Board of Health meeting.

**7:30 p.m. Town of Billerica – Whipple Road Proposed Bridge Replacement – Request a Waiver of Regulations for work within the Flood Plain**

Mrs. O'Rourke stated the last item on the agenda is the Town of Billerica, proposed Whipple Road Bridge Replacement requesting a Waiver of Regulations for work within the Flood Plain.

Kelley Conway, Billerica Town Engineer identified herself. Ms. Conway explained that the Whipple Road Bridge has been closed since the March 2010 flooding. The Shawsheen River is the town line between the Town of Billerica and Wilmington. The bridge is also a key link for the Town of Tewksbury for their emergency access and school bus routes. The three (3) towns have teamed together to fund the design and construction of this project. The design is complete and we are here tonight to talk about a Waiver of Regulations, Chapter 5, Section 5 for work within the flood plain. Richard Canavan, CME Associates is present tonight to talk about the design of this project.

Mr. Canavan presented the Board with a large copy of the proposed plans for the Whipple Road Bridge Replacement.

Richard Canavan, Senior Environmental Scientist, CME Associates, Inc. identified himself. Mr. Canavan explained that he was representing the Town of Billerica, Department of Public Works. The bridge was damaged by flooding during the spring of 2010 and has been closed to traffic since that time. The proposed bridge replacement requires work within the flood plain based on the elevation of the existing roadway and structure of the bridge. The goal of the design is to replace the existing deck and upper portions of the abutments. The opening on the side will stay the same. Mr. Canavan pointed to the plans and explained the proposed bridge replacement and a profile cross section of existing and proposed bridge elevations through the roadway centerline. The project will include replacing the guard rails and the bridge deck itself. Mr. Canavan asked the Board Members if they had any questions. The bridge will be functional for traffic but will not affect the flood plain either upstream or downstream of Whipple Road.

Mrs. O'Rourke asked about the vacant house.

Ms. Conway explained that the Town of Tewksbury is negotiating with the property owner. The owner lives in Texas and it has been a rental property for years. The property will be taken over as Conservation land.

Mrs. O'Rourke asked who is paying for this project.

Ms. Conway replied that the three towns are paying for it.

Mrs. O'Rourke asked are we getting any money from the State.

Ms. Conway replied that not that she is aware of. The three towns are using Chapter 90 money for the design. Billerica will also be using Chapter 90 money for the construction.

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

Mrs. Giroux asked when will the project be completed.

Ms. Conway replied that she does not know. The design is complete. The next step is to go before the Conservation Commission in all three (3) towns.

Mr. Canavan explained that they are going before Wilmington next week and Billerica the following week.

Ms. Conway explained that Wilmington has been a little difficult in committing to fund the project.

Mrs. Giroux asked how much is the project going to cost.

Ms. Conway replied approximately \$250,000.

Mrs. Giroux asked is that \$250,000 for each town.

Ms. Conway replied no that cost would be split 3 ways so it will be approximately \$80,000 per each town.

Mr. Grady commented that maybe Wilmington is hesitant because it serves no purpose for them.

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

Mr. Berube commented that he did not have any issues with granting the Waiver of Regulations for the proposed Whipple Road Bridge Replacement.

Mrs. Giroux made a motion to grant a Waiver of Billerica Health Regulations, Chapter 5, Section 5.5.005 (1) (2) to allow the replacement of the Whipple Road Bridge located in or within one hundred (100) feet of the Flood Plain based upon the following facts and subject to the following conditions:

**FINDINGS OF FACT**

- 1) The work described in the applicant's request, and as per plan submitted by CME Associates, Inc. for the Billerica Department of Public Works, is within an area subject to protection under the Board of Health's Rules and Regulations, Chapter 5, Section 5.5.005(1)(2).
- 2) The Towns of Billerica, Wilmington and Tewksbury are working together to repair the bridge at Whipple Road over the Shawsheen River. The proposed project consists of replacing the existing deck and upper portions of the abutments. The bridge was damaged by flooding in the spring of 2010 and has been closed to traffic since that time.
- 3) The proposed bridge replacement project requires work within the Flood Plain of the Shawsheen River. The proposed project is designed to minimize alterations to the existing bridge opening and adjacent topography in order to maintain existing flood storage.
- 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 2, 4, 5, 6, 10, 11, 12, 13, 14, 15 and 25 in accordance with the Board of Health regulations and Special Conditions:

- A) All proposed activity must be in accordance with plans submitted for review and approval, prepared by CME Associates, Inc. dated February 7, 2012 and stamped by Bryan Busch.
- B) 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 construction.

Mr. Kane seconded. So voted unanimously.

**Open Microphone**

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

No one was present in the audience for open microphone.

Mrs. Giroux asked about the activities at the new spa located in Pinehurst.

Mr. Berube explained that the Board of Health does not have jurisdiction any longer. Mr. Berube explained that he filed a complaint with the Board of Licensure and they were going to investigate. According to Roy Frost from the Police Department they found no evidence of any wrong doing.

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

The Board adjourned at 7:50 p.m.

Respectfully submitted,

Sandra Giroux  
Secretary

Joanne M. White  
Recording Clerk