

BOARD OF HEALTH MINUTES
May 7, 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. Reader made a motion to accept the Meeting Minutes of April 9, 2012, with corrections Mr. Kane seconded. Four (4) voted in favor. One vote abstained (Sandra Giroux).

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 April have been included in the Boards package.

Mrs. O'Rourke stated the first report is from the Public Health Nurse, Christine West.

Mr. Berube explained that Christine continues with her routine activities and is currently working with Blue Cross Blue Shield (BCBS) on the Employee Wellness Program that has been approved by the Town Manager. The next seminar will be an all men's seminar held in late May on "Preventing Back Injury" for the Department of Public Workers (DPW).

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

The Board Members did not have any questions.

Mr. Berube stated that the next activity report is from Health Agent, Phavy Pheng.

Mr. Reader asked if town sewer was available for 78 Pinedale Avenue yet.

Mr. Berube explained that the owner of 78 Pinedale Avenue, Mr. Mitchell hired Dresser, Williams & Way to design the plan for a sewer extension. We are going to meet with the Wastewater Division to ensure that the plan complies with the town standards.

Mr. Reader asked about the hoarding case at 483 Middlesex Turnpike and if the resident is living there?

Mr. Berube replied that he did not know.

Mrs. O'Rourke asked about the mold problem at 51 Fardon Street and the Show Cause Hearing that was scheduled for April 3, 2012.

Mr. Berube replied that the court case has been dismissed because the mold problem has been addressed. However, there are a few minor violations that still need to be addressed.

Mr. Berube explained that Empire Recycling had only three (3) new complaints since the April report. I spoke with the Condo Association and they informed me that the situation has improved.

Mr. Reader asked is Empire Recycling planning on moving somewhere else.

Mr. Berube replied that the owners of Empire Recycling are exploring a couple of other properties on Sterling Road.

Mr. Reader asked if the complaint on 57 Tower Farm Road is the new house that was recently renovated.

Mr. Berube replied no, this complaint is about the house next door.

Mrs. Giroux asked if the Health Department has any recourse with the bagsters.

Mr. Berube replied that if the Board of Health receives a complaint that the bagster has been there for a long time then we can issue a notice to remove the bagster or we will issue a fine.

Mrs. O'Rourke stated that if we can investigate a messy yard at 31 Devonshire Drive, why can't we investigate the property at 150 Allen Road. Mrs. O'Rourke explained that she has received many complaints about that property. Why can't we force the owner at 150 Allen Road to clean up the yard?

Mr. Berube explained that a resident complained about the junk and debris in the yard at 31 Devonshire Drive.

Mr. Reader stated that he received the same complaint today regarding the property at 51 Allen Road. Have any of the neighbors complained?

Mr. Berube replied that we have not received any recent complaints. She is a hoarder and is supposed to be seeking counseling. We can reopen up the case if the Board would like. She has stated that she wants to keep her yard in a "natural state".

Mr. Grady explained that 2 weeks ago the property management company was at 334 Salem Road and put a blue tarp on the roof. More junk has been dumped on the property. A tarp full of shingles has been there for quite some time. The roof was replaced three (3) years ago and now they covered the roof with a blue tarp. The problem is getting worse. Some granite curbing, toilets and other junk have been dumped on the property. The management company was out there, looked at all the piles of junk and debris and did nothing.

Mr. Berube replied that we do not always get a response from the banks or the management companies.

Mr. Berube asked if the Board Members had any questions regarding Phavy Pheng's report.

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

Mr. Berube explained that Gary is present tonight to answer any questions that the Board may have.

Mr. Grady asked what is a big dipper.

Mr. Courtemanche explained that it is a type of an interior grease trap with an automatic skimmer.

Mrs. O'Rourke asked is everything at Stephanie's Restaurant working properly.

Mr. Courtemanche replied yes, the water test came back at 48 milligrams per liter anything less than 100 milligrams is passable.

Mrs. O'Rourke asked where will the new nail salon be located.

Mr. Courtemanche explained the location of the new nail salon at 245 Boston Road.

Mrs. O'Rourke asked the Board Members if they had any questions regarding Gary's report. Mrs. O'Rourke asked what the status of Pedro's Latin Cuisine is.

Mr. Courtemanche explained that Pedro's is supposed to be passing papers at the end of May. Max and Dylan's will be opening up at that location. They currently have other establishments. One establishment is located in Boston.

Aerial Larvicide Program Update

Mrs. O'Rourke stated the next item is the Aerial Larvicide Program.

Mr. Berube explained that at first there were thoughts of canceling the Aerial Larvicide Mosquito Program because of the dry weather but due to the recent precipitation and the increase in the larval activity, Central Mass Mosquito Control decided to move forward with the application. Approximately 600 acres of wetlands were done. Included in the Board's package is a copy of the 2012 CMMCP Aerial Larvicide Program.

Mrs. O'Rourke asked the Board Members if they had any questions regarding the aerial larvicide program.

The Board Members did not have any questions.

Proposed Tobacco Control Regulations

Mrs. O'Rourke stated the next item is the Proposed Tobacco Control Regulations.

Ron Beauregard, Healthy Communities Tobacco Control Program, provided the Board Members with a copy of the proposed "Sample Regulations Restricting the Sale of Tobacco Products and Nicotine Delivery Products".

Mr. Berube explained that in the past the Board has discussed tobacco control issues in Billerica. Ron Beauregard from Healthy Communities Tobacco Control Program has put together a package regarding proposed tobacco regulations. Ron is present tonight to talk about the "Sample Regulations Restricting the Sale of Tobacco Products and Nicotine Delivery Products" that is included in the Board's package. The Board can then review the proposals and redraft the Billerica Board of Health Tobacco Regulations. The proposed changes can be discussed at a public hearing in the future.

Ron Beauregard, Healthy Communities Tobacco Control Program, identified himself. Mr. Beauregard explained that it is very common for many local communities to update their tobacco control regulations. One proposal is to incorporate Nicotine Delivery Products into the regulations because we have seen many of these devices in the retail tobacco establishments. Tewksbury will be holding a public hearing on June 21, 2012 to discuss the proposed regulations. Nicotine Delivery Products are E-Cigarettes, E-Cigars, E-Pipes or any other electronic products that are composed of a mouthpiece, heating element, battery and/or electronic circuits that provide a vapor of liquid nicotine to the user, or rely on vaporization of solid nicotine or any liquid. These products should have the same rules that

apply to tobacco products. They are not approved by the Food and Drug Administration (FDA) as a smoking cessation device. We are recommending that the regulation be amended so that the same rules apply to regulate the access of these tobacco products. We are also recommending that the person needs to be identified and the product is not within reach of its customers. The banning of tobacco products or nicotine delivery products in pharmacies or drug stores is another proposal. Mr. Beauregard explained the arguments that some of the communities have discussed regarding the sale of tobacco products in a pharmacy or drug store. Mr. Beauregard explained that the marketing representatives of the tobacco companies are in favor of the tobacco products being located in the front of the store. The other concern is that the tobacco sales will be shifted to gas stations and convenience stores. Training of employees at the other establishments is also a concern. Another proposal is regulating the sale of single inexpensive cigars, not the cigars that are sold in a cigar shop. We are talking about the cigars that are fruit or candy flavored. Another proposal is to prohibit the sale of blunt wrap products that are used to roll your own cigars. Another proposal is to prohibit Roll Your Own Machines. There are only three (3) communities that have those machines. Mr. Beauregard explained how these machines are used for loose tobacco material and how they function. The last proposal is to prohibit the sale of tobacco or nicotine products in educational institutions. Mr. Beauregard explained that Section 11 of the Billerica Board of Health Rules and Regulations state the current regulation about the Smoke-Free Workplace Law. It mirrors the 2004 State law. Communities have chosen to make their laws stronger than the state law. There has been an exception for smoking bars. These are establishments that the Massachusetts Department of Revenue has issued a valid permit to operate a smoking bar because the establishment is primarily engaged in the retail sale of tobacco products for consumption by customers on the premises and that is most of their income. There have been discussions in some communities about eliminating smoking in private clubs. The last proposal is smoking in Retail Tobacco Stores these are stores where no one under the age of eighteen would be allowed in the store. Mr. Beauregard explained that these are proposals that Billerica may want to include in their rules and regulations.

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

Mr. Reader asked if any communities have banned smoking in private clubs.

Mr. Beauregard replied yes.

Mr. Reader asked was it approached through town meeting.

Mr. Beauregard replied if it was a by-law it was handled through town meeting if not it was handled through the local Board of Health.

Mr. Reader asked would the State handle it.

Mr. Beauregard replied they did not want to handle it.

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

Mr. Berube explained that these are some of the proposals that the Board may want to implement into the Billerica Board of Health Regulations.

Mrs. O'Rourke suggested that a committee be formed to discuss the proposals. Mrs. O'Rourke asked the Board Members if they had any suggestions.

Mr. Reader volunteered to be on the committee to discuss the tobacco proposals.

Mrs. Giroux and Mr. Kane also volunteered to be on the committee.

Mr. Berube explained that he would arrange for a meeting to start the review process of the proposals. Mr. Berube asked Ron Beauregard if he would be available to attend a meeting to answer any questions the committee may have.

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

Ethics Exam

Mrs. O'Rourke stated the last item under Board of Health Business is the Ethics Exam.

Mr. Berube explained that in the fall of 2009, all municipal employees and committee/commission members were required to take an online Ethics exam that would be good for two (2) years. Robert Reader, Sandra Giroux and Daniel Kane need to renew their online exam and submit a Completion Certificate to the Town Clerk's office and to the Board of Health office. Mr. Grady and Mrs. O'Rourke have already completed the exam.

7:15 p.m. Stephen R. Dresser – Pleasant Street – Request a Variance for work within the Flood Plain

Mrs. O'Rourke stated the next item on the agenda is Stephen R. Dresser, Pleasant Street requesting a Variance for work within the Flood Plain.

Mr. Berube explained that he received a phone call from Mr. Dresser requesting that the hearing be postponed because he needed to make some changes to the plan. The Pleasant Street hearing will be rescheduled to the June 4, 2012 Board of Health Meeting.

Director's Notes

Mrs. O'Rourke complimented Mr. Berube on the notes that he included in the Board's package. Mrs. O'Rourke asked Mr. Berube if the Board would be receiving the notes before every meeting.

Mr. Berube replied yes.

Mrs. O'Rourke asked Mr. Berube what prompted him to write these helpful notes.

Mr. Berube replied that at some of meetings the Board has struggled when making a decision so I thought it would be helpful to provide a summary for each hearing.

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

The Board Members did not have any questions.

7:25 p.m. OM Temple, Inc. – Boston Road – Request a Variance for work in the Flood Plain and within 100 feet of the Flood Plain and Stormwater Management Approval

Mrs. O'Rourke stated the next hearing is the OM Temple, Inc., Boston Road requesting a Variance for work in the Flood Plain and within 100 feet of the Flood Plain and Stormwater Management Approval.

David Kelly, Kelly Engineering Group, Inc. presented the Board with 2 large site development plans of the proposed OM Temple to be located at 240 Boston Road for review.

Adam Brodsky, Environmental Lawyer, representing OM Temple, Inc., identified himself. Attorney Brodsky introduced Tej Tanden, Trustee, Kanayo Lala, Project Engineer and the review engineers from Kelly Engineering Group, Inc., David Kelly and David Mackwell. Attorney Brodsky explained that OM Temple owns a 10.8 acre site along the Concord River. This site is located within the FEMA Flood Plain and the Green Engineering Flood Plain. In 2002, OM Temple proposed an eighty one hundred (8,100) square foot religious and educational facility to be constructed adjacent to the river. In 2005, this Board approved the project and granted a covenant for a variance for the construction of this structure within the flood plain. OM Temple proceeded with its wetland permit for this project. However, the Conservation Commission was not in favor of this project. In 2010, OM Temple received final approval of the wetlands permit from the Department of Environmental Protection (DEP). However, the project was changed substantially. The size of the structure was changed to fifty four hundred (5,400) square feet and relocated away from the river. All these changes substantially reduced the flood plain impact. After we received the wetlands permit we appeared before the Board of Health in July 2010 requesting further extension of the variance and requested that the variance be amended to reflect the changes. Rather than extend the variance, Mr. Berube requested that we submit a new application for a variance to the Board. We agreed to withdraw our request for the extension and submitted a new application. We have taken one year to revise our project design so that we would comply with the new stormwater management regulations that were adopted by DEP in 2008. We do not agree that this project should be governed by these new stormwater regulations. However, we have redesigned the project to comply with the current stormwater requirements. Mr. Kelly has worked very closely with Mr. Jeff Rider, the Town of Billerica's consultant to revise the plans to get us to the point to present the new design to the Board. We need a variance for construction in the town's flood plain under the Board of Health's regulations and approval for the stormwater management by-law. We are also requesting three (3) waivers under the stormwater management policy. Mr. Kelly will explain those

waivers. DEP approved this project under the old stormwater management policy. We have consulted with DEP regarding the project changes that we are proposing and developed and DEP finds those changes acceptable.

David Kelly, Kelly Engineering Group, identified himself. Mr. Kelly explained that the project is adjacent to the Department of Public Works (DPW) lot. Mr. Kelly pointed to the driveway off Route 3A and explained that the lot will contain 43 parking spaces. The site is quite large. The proposed building will be approximately fifty five hundred (5,500) square feet. Mr. Kelly pointed to plan and explained that the red line is the wetland line and the green line represents the boundary of the property. Mr. Kelly pointed to the plan and explained the changes that were made to the project. On the original plan the driveway was proposed to have parking on both sides. During the permit process with DEP it was agreed to shrink the project size and pull the project back away from the river. Mr. Kelly explained that the building was going to be 8,100 square feet and the proposed building will be approximately 5,400 square feet. The proposed paved area was going to be approximately 65,000 square feet and now it will be 26,000 square feet. The parking spaces went from 83 to 43. The total disturbance dropped from 146,000 square feet to approximately 51,000 square feet. We have been working since 2010 to develop these plans to be consistent with the current DEP stormwater regulations. We have an extensive stormwater management system proposed for this site that consists of all of the standard best management practices such as catch basins where appropriate, stormwater quality devices, low impact devices, swales and detention recharge stormwater management ponds. A combination of all of these allows us to comply with each of the 10 DEP standards for stormwater management. We have worked with Mr. Rider on these plans. There are three (3) minor items that we do not comply with. Mr. Kelly stated we do not think we need to fully comply with these items because it would be in the best interest of the project and the public. Mr. Kelly stated that he would explain in detail his analysis for requesting the three (3) waivers. The first waiver we are proposing is for a two (2) foot wide bench just wide enough for a wheel barrel instead of a 10 foot access to allow for maintenance. The stormwater pond where the water from the property is gathered and transferred to two (2) ponds has a detention capability. Once the water enters the detention ponds it is slowed, treated and allowed to release through the storm drains back out to the wetlands area. The second waiver deals with freeboard. We are proposing less than one foot of freeboard. We don't think this is a problem because the town's methodology is for a 100 year storm event. The third waiver is for the groundwater separation. The DEP document recommends two (2) feet of separation from a recharge system to high ground water. We have fully complied except for those three (3) items. Not granting the waivers would require additional filling of the site which would impact the ability of the flood plain to hold water and would cause more disturbance to the vegetation. We feel that the design of this project is consistent with the stormwater regulations and would continue to protect public health. Mr. Kelly explained that a small portion of the site is located within the FEMA Flood Plain. The FEMA maps have been updated about a year ago. The base flood plain elevation has been lowered from 116.5 to 115.8 however the Board of Health refers to the Green Engineering Flood Plain (GEFP) map which shows the majority of the property is in the flood plain.

Mr. Berube asked when you refer to 115.8, what datum are you using.

Mr. Kelly replied the 115.8 datum is (NGVD 29). The elevation has been dropped along the Concord River as a result of the analysis. The majority of the site is within the GEFP and a small portion is within the FEMA Flood Plain. As described in Jeff Rider's memo dated April 30, 2012, the design of the site complies with the requirement that there will be no net impact to the flood plain as a result of this project. We have raised the elevation of the building and it will be constructed on stilts so that its access to the front and rear areas will be open. Any impact to the flood plain will be offset by the removal of material. Jeff Rider has reviewed and approved our calculations. It is also noted in the memo that if the site floods to the GEFP elevation Mr. Rider recommends that the site would not be occupied. Mr. Kelly stated that he would answer any questions the Board may have. David Mackwell, Project Engineer, Kelly Engineering Group is also present to answer any questions.

Jeff Rider, Project Engineer at Cuoco & Cormier Engineering Associates, Inc., identified himself. Mr. Rider explained that he is the Board of Health's Consultant. The flood plain calculations were reviewed by Cuoco & Cormier. The calculations show there would be no net filling of the flood plain. As for the three (3) waivers from the offset to the water table there is only a few inches difference. There will be some fluctuation in the water table. DEP requires a two (2) foot separation and there will be one (1) foot eight (8) inches. There will still be some buffer available. As for the freeboard issue it is only a problem if there is a one hundred (100) year storm. If the ponds overflow they will flow to the river and not into someone's backyard. If there is a 100 year storm the ponds are going to be underwater. As for the two (2) foot wide bench, the ponds are right against the parking area and it can be easily reached so I do not see any problem with a waiver being granted.

Mr. Reader asked during a one hundred (100) year storm would that entire area be flooded.

Mr. Rider replied most of it would flood.

Mr. Kelly pointed to the plan and explained what areas would flood and what area was not in the GEFP.

Mr. Reader commented that when flooding occurs in the spring the building will not be accessible.

Mr. Kelly replied what is shown on the plan is pretty accurate.

Mr. Reader stated that area of Boston Road has been under water when there is flooding in the spring.

Mr. Rider stated there are a few issues that need to be clarified.

Mr. Berube stated that looking at Mr. Rider's report dated April 30, 2012 there are still a number of outstanding comments that have not been addressed. Mr. Berube explained that he has not had a chance to review the latest submittal from David Mackwell to see if the other items have been addressed.

Mr. Rider stated that he just received Mr. Mackwell's report and has not had a chance to review it.

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

Mr. Grady asked how the elevation compares to the elevation at the DPW yard.

Mr. Kelly replied that the DPW yard is a little higher in front but lower in the back.

Mrs. Giroux asked about the walkway around the pond.

Mr. Rider explained that it makes sense so that they can do some maintenance. DEP is writing regulations to cover all situations. I don't think that is going to be an issue.

Mrs. Giroux stated that she thought the entire driveway was going to be crushed stone.

Mr. Kelly pointed to the plans and explained that all of the parking spaces on the property are going to be a non-impervious product. The Fire Department wanted to make sure the main routes are paved.

Mr. Tanden explained that originally the whole thing was going to be grass but the Fire Department insisted that we have a paved path for the fire trucks so we complied with their request.

Mrs. Giroux stated that she is concerned because this property floods.

Mrs. O'Rourke asked if any abutters were present that would like to ask any questions.

Joseph Smith, 7 Shaffer Street, Billerica identified himself. Mr. Smith asked how far from the ponds is the DPW yard.

Mr. Kelly pointed to the ponds and the DPW site and explained that the ponds are approximately 200 feet from the DPW yard.

Mr. Smith asked how many gallons of water are contained in those two (2) ponds.

Mr. Kelly replied he was not sure, but the volumes are quite small. Mr. Kelly stated that he would find out. The ponds are twenty (20) feet wide and approximately sixty (60) feet long.

Mr. Smith asked how long would it take for the water to drain into the wetlands and then into the river.

Mr. Kelly replied the ponds are designed to release all the water in a twenty-four hour period. A portion of the water goes through the outlet pipe and a portion goes into the ground as well.

Donna Gadbois, 139 Waterview Avenue, Billerica identified herself. Ms. Gadbois asked when this project was scaled back why it wasn't scaled back to the point that it would not have such an impact.

Mr. Kelly replied we are stating that there is no impact because of what we have done. The structure is the size of a good sized house. The actual pavement is a small percentage of the lot. The building is 5400 square feet.

Martin Smith, 1 Waterview Avenue, Billerica, identified himself. The proposed building is being constructed on stilts, are you expecting it to flood? Why is there so much effort on the ponds to avoid flooding if that is what you are expecting?

Mr. Kelly replied it will be constructed on stilts to comply with the requirements of the Town's regulations for flood plain analysis. This building will not require flood insurance because it is not in a FEMA Flood Zone. We have designed a stormwater system to offset the impact of the site to slow the water down, treat it and then release it.

Mr. Smith commented so it was not your choice to construct the building on stilts but it was the choice of the town.

Mr. Kelly explained it is to comply with the Town's regulations relative to the GEFP maps.

Mr. Smith asked is anything going to happen in the wetlands or will any trees be cut down or anything of that nature.

Mr. Kelly replied there will be no impact. There is a small trail that extends out from the back of the site. Mr. Kelly pointed to the clearing and explained there will be no structures, no pavement and no pathways it will remain the same.

Mr. Smith asked what is the purpose of having a clearing in the wetlands.

Mr. Kelly replied it is a part of the operation of the temple.

Attorney Brodsky explained that a clearing in the wetlands was approved by DEP in connection with the wetland permitting. It is subject to stringent requirements.

Mrs. O'Rourke asked if the temple was going to be the only building on that property.

Mr. Kelly replied yes.

Mr. Smith asked how far back from Route 3A will the building be located.

Mr. Kelly replied approximately one hundred seventy (170) feet from the pavement.

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

Mr. Berube explained this project has taken a long time to get to this point. It is an extremely challenging site. I do not think the review has been completed. There are still some unanswered questions regarding stormwater management. I agree with their arguments regarding the flood plain. I think the project meets the intent of the Board's Flood Plain Regulations. At this point I am uncomfortable with granting any variances for stormwater management until we receive some more clarification. I do not want to grant a variance of our regulations and set a dangerous precedence. This is a unique project and I want to make sure it is done right. I do not want this to come back to haunt us down the road. My recommendation to the Board would be to continue the hearing until we get a chance to review the latest submittal. Mr. Berube explained that he would like a written request from Kelly Engineering regarding the three (3) variances along with their arguments supporting their request. Then OM Temple will be scheduled to appear at the next Board of Health meeting with recommendations for the Board.

Attorney Brodsky explained that we addressed all the waiver and variance requirements. However we will provide some additional information as requested. When we received Mr. Rider's comments we quickly updated our SWPPP plan for him to review.

Mr. Berube stated that Mr. Rider still had some questions about the drainage calculations and I want to make sure that everything is in place. As I stated before we have never granted a variance for stormwater management. I want to make sure it is reasonable for the Board to grant the variance.

Mrs. Giroux made a motion to continue the hearing until the following issues are addressed and the latest plans and associated documents are adequately reviewed by the Board's Consulting Engineer.

Mr. Reader seconded. So voted unanimously.

Attorney Brodsky asked when is the next Board of Health meeting.

Mr. Berube replied June 4, 2012.

Attorney Brodsky stated that he would provide the Board with the additional information for the three (3) variances and work with Mr. Rider regarding the stormwater management issues.

Mr. Berube reiterated that he would like additional documentation in writing to support the three (3) variance requests. Mr. Berube suggested that a meeting be held with Kelly Engineering prior to the next Board of Health meeting to review the information that he has requested.

Attorney Brodsky thanked the Board for their time.

7:45 p.m. Billerica Getty Mart (BP Gas Station) – 581 Boston Road – Show Cause Hearing for Permit Revocation

Mrs. O'Rourke stated the last hearing is Billerica Getty Mart (BP Gas Station) Show Cause Hearing for permit revocation.

Mr. Berube explained that he considers this a very serious matter. This matter was first brought to our attention by the Billerica Police Department. Officer John Haring is present to explain what transpired. There were sales of tobacco to minors as well as the sale of "loosies" (out of package sales) at the BP Gas Station, 581 Boston Road. As the Board may recall Ron Beauregard talked about "loosies" at one of his presentations in the past. This was not a onetime event. This activity has been ongoing. I consider this to be a very egregious matter that required immediate corrective action. The Health Department contacted the manager of the BP Gas Station and an Administrative Enforcement Conference was held on March 27, 2012 to review the tobacco control violations. The Health Department provided Mr. Johanni the opportunity to turn things around. As a result of the enforcement conference a two hundred (200) dollar fine was issued and we advised the manager to provide his staff and himself with training so that they could properly sell tobacco products without future violations. Unfortunately, the manager failed to comply with the order and seemed to ignore the advice we had given him. That is what prompted this action to conduct a Show Cause Hearing, before the Board. Considering the seriousness of this matter, I think we need to take some prompt action. My recommendation is to revoke his license to sell tobacco products. I did not see any effort on their part to comply. I have been very lenient and I don't think they have taken this matter seriously. I don't think suspending his license will work. I also suggest that we revoke his food service permit and send a letter to the Selectmen that maybe their business license should be revoked. Officer John Haring is present tonight to testify as to what he observed. Gary Courtemanche and Ron Beauregard have also visited the gas station on several occasions.

Officer John Haring, Billerica Police Department identified himself. Officer Haring explained that in September 2011 two incidents were documented. The Police Department has received a lot of complaints about the narcotics activity at the BP Gas Station and a lot of kids loitering in that area. Inspector West conducted a surveillance on September 4, 2011. There was a lot of traffic going into the kiosk, spending a short amount of time in there and leaving without carrying anything out. Inspector West followed a car down to the Town Plaza parking lot and spoke with the individuals in the car. They admitted that they just purchased "loosies" at the BP Gas Station. Inspector West went back to the gas station and talked to the proprietor and warned him that he had information that marijuana was being sold at this location. Mr. Johanni admitted that they had been selling the marijuana and "loosies". Inspector West told him to stop selling those products immediately. On February 12, 2012 I conducted a surveillance in a marked car across the street in full view and watched the gas station with binoculars. Within 15 minutes I saw several vehicles coming and going. One vehicle was parked in front and a student came out with a "loosies". I stopped the car and spoke to him. He is a high school student and he told me that he purchased the cigarette from the person at the BP Gas Station. I went across the street and warned the proprietor to stop selling "loosies". We have had continuous calls about kids loitering at the BP Gas Station.

Mrs. O'Rourke asked Mr. Courtemanche if he had any comments.

Mr. Courtemanche explained that after the Health Department received the information from the Billerica Police Department I went to the BP Gas Station and did not see any "loosies" being sold. I spoke to the young lady that was working there and made a point of reminding her about selling "loosies". She informed me that they are not selling "loosies" any more. My biggest concern is that at the enforcement hearing Mr. Johanni was given a specified time to pay the fine and also seek some guidance for tobacco training for his staff and himself. The time ran out. When I delivered the letter for the Show Cause Hearing he stated that he forgot. As far as I am concerned there wasn't any effort made to restore his credibility.

Mrs. O'Rourke asked Mr. Beauregard if he had any comments.

Mr. Beauregard explained that subsequent to the reports two (2) compliance checks were conducted with two (2) different students. One student tried to purchase a "loosies", he was told that they did not sell them anymore. The other student tried to purchase a pack of cigarettes. Both times the sale was refused. After the hearing I made an attempt on April 11, 2012 to contact Mr. Johanni at 978-987-9827 and I got a message that the mail box was full. I attempted a couple of other times and could not contact him.

Mrs. O'Rourke asked Mr. Johanni if he would like to talk to the Board.

Hafiz Johanni, Manager identified himself. Mr. Johanni explained that after the first warning when Officer Harring came in he stopped selling the "loosies".

Mrs. O'Rourke asked are you the owner.

Mr. Johanni replied that he is the manager. I just signed a contract with the new distributor. The old distributor was Green Valley and they were terminated by Getty Petroleum. I did not have any gas for a month so I did not have any money. I have been losing money because of no gas. I have signed a contract with the new distributor and I am back in business now. I had to lay off two (2) employees because I was not making enough money to pay them. I have been working sixteen (16) hours a day.

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

Mr. Kane asked Mr. Johanni when you recognized that you would not be able to pay the fine, did you notify the Board of Health office and explain your situation.

Mr. Johanni replied that when Mr. Courtemanche came and gave me the notice for the hearing, I asked if I could pay the fine at that time. Mr. Courtemanche replied no. I can make the payment now.

Mr. Kane stated but at the time when you recognized that you could not pay the fine you did not take any action to address the situation until after the enforcement action occurred.

Mr. Johanni replied I was told that I could not make the payment at that time.

Mr. Kane asked did you take any action to bring in a consultant and educate your staff and yourself regarding the appropriate tobacco sales, regulations and the town by-laws between the time of the warning and the enforcement action.

Mr. Johanni replied that he just explained to his staff that they were not to sell "loosies" anymore and they definitely needed to check everyone's ID.

Mr. Kane asked was that part of the enforcement meeting. It seems like the fine and the educational requirement was very clear. Did you contact anyone for training or what you told your employees the extent of what you did.

Mr. Johanni replied that he only told his employees to stop selling "loosies".

Mr. Kane stated so you chose not to follow the order.

Mr. Johanni replied that he did not chose not to follow the order, he just did not do it.

Mrs. Giroux asked how long have you been the operator or manager.

Mr. Johanni replied since August 2010.

Mrs. Giroux stated so you should be familiar with the Town of Billerica's guidelines and policies. When the sale was made were you told about it right away however, you did not see the need to pay attention to the order.

Mr. Johanni replied not to the point that I called about training.

Mrs. Giroux asked how much tobacco do you sell.

Mr. Johanni replied approximately 40 packs of cigarettes a day. The sale of cigarettes is most of my sales.

Mrs. O'Rourke asked can you go into the establishment.

Mr. Johanni replied yes, it is a small kiosk.

Mr. Reader stated that he could not understand why you let it get to this point. When it gets to this point you are in big trouble. This situation should have been addressed the first time Officer Haring warned you. When you get to this point there are not a lot of options.

Mrs. O'Rourke asked for a motion.

Mr. Reader made a motion to revoke the Tobacco Permit from the BP Gas Station, located at 581 Boston Road, Billerica.

Mrs. Giroux seconded. So voted unanimously.

Mr. Berube asked when do you want this to go into effect.

Mrs. O'Rourke replied immediately.

Mr. Berube asked if the Board would like him to contact the Selectmen. We had the enforcement conference and we gave him the opportunity to turn things around. Any training would have been free of charge. Ron Beauregard gave him his contact information and he never contacted him. When Gary delivered the notice he wanted to pay the fine. Mr. Johanni did not take this seriously.

Mr. Johanni replied that he does not have any employees so he is running the business by himself.

Open Microphone

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

A person in the audience asked about the Pleasant Street hearing.

Mr. Berube explained that a postponement was requested by the applicant because of a change in the plans. A letter will be sent out by first class mail as a reminder of the hearing. The new hearing will be scheduled for June 4, 2012.

The person asked is there anyway a letter could have been sent out about the cancellation of the meeting.

Mr. Berube replied that another notice will be sent. Unfortunately, the hearing was cancelled at the last minute.

The person in the audience asked who makes the rules regarding the cancellation of a hearing.

Mr. Berube replied the Board.

Mrs. O'Rourke explained that he should submit a written request to the Board about changing the rules regarding the postponement of a hearing. Then the Board will discuss the request.

Mr. Kane asked so now that the license is being revoked, what will happen to all his cigarette stock.

Mr. Berube replied a written decision will be hand delivered and his license will be taken away at that time. We will also look into his remaining stock of cigarettes. I will talk to Ron Beauregard about how we handle this situation.

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

The Board adjourned at 8:55 p.m.

Respectfully submitted,

Sandra Giroux
Secretary

Joanne M. White
Recording Clerk