

BOARD OF HEALTH MINUTES
July 2, 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, Richard Berube, Director and Joanne White, Recording Clerk. Mike Grady was absent.

ACCEPTANCE OF MINUTES

Mr. Kane made a motion to accept the Meeting Minutes of June 4, 2012. Mr. Reader seconded. Three 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 June 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 has conducted three (3) camp inspections along with Gary Courtemanche and Phavy Pheng. Christine has ordered flu vaccine to prepare for the 2012-2013 Influenza Season.

Mrs. O'Rourke asked if Christine has to pay for the Shingles Vaccine and if so how much and do we charge the residents for the shot.

Mr. Berube replied that he would find out that information.

Mr. Reader asked how many cases of Lyme disease are reported in Billerica each year.

Mr. Berube replied that he did not know but he would find out and get back to the Board.

Mr. Reader asked when the spraying is done for mosquitoes does it also help to control ticks.

Mr. Berube replied no, there isn't anything that can control Lyme disease. We advise the residents to use the same safety precautions for ticks as we recommend for mosquitoes. We strongly advise the use of insect repellent that has DDT and wear long sleeve shirts and pants.

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. Berube explained that there has only been one complaint from Empire Recycling since last month. I think the residents have not been calling in any complaints because they are frustrated with the process. If there is a legitimate issue they should be contacting the Board of Health.

Mrs. O'Rourke stated that if there were any problems the residents would be calling the Board of Health office to complain.

Mr. Berube explained that 11 Blades Circle is the result of a house that has been destroyed by fire and the owner has been notified that he needs to file with the Board of Health because there is a stream that flows behind the property and there is a flood plain that is associated with that property. The house is in the flood plain buffer zone. There is a dam that impounds a great deal of water. It appears that he has been doing a lot of work on that dam and it is impounding more water. We have contacted the State regarding dams. We do not want to see that dam fail. It looks like he has been expanding the structure of the dam and using the ashes from his burnt house to fill in behind the structure.

Mr. Reader asked where Blades Circle is located.

Mr. Berube explained the location. The houses in that area are on wells and have septic systems.

Mr. Reader asked about the status of 150 Allen Road.

Mr. Berube explained that the Health Department is trying to work with the owner to clean up the trash on the property at 150 Allen Road.

Mr. Berube explained that the owner of 1 Mitchell Road has received permission from Plaza Place Condominiums to tie into their sewer system. He has hired a contractor and is waiting for the letter from their attorney approving the sewer connection and then he can move forward.

Mr. Berube explained that there are railroad rails and ties being dumped along the train tracks on Rogers Street. That complaint is the result of a neighborhood meeting. Mr. Berube stated that he will be contacting Pan Am Railways to clean up the area.

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

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

Mr. Berube explained that a pipe burst on the top floor at the Homewood Suites, 35 Middlesex Turnpike. It flooded the south side of the hotel. Gary issued an Emergency Closure Order for the south side of the building because of the massive water damage.

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

The Board Members did not have any questions.

Mosquito Control Project Update

Mrs. O'Rourke stated the next item is an update regarding the Mosquito Control Project.

Mr. Berube explained that there has been no indication of the West Nile Virus or EEE in Billerica from the Arbovirus Surveillance Report. Included in the Board's package is a copy of the dates that Central Mass Mosquito Control will be in Billerica to investigate resident's complaints and spray the areas that are requested by the residents. Complaints about mosquitos may be made to the CMMCP office at 508-393-3055 between the hours of 7:00 a.m. to 3:30 pm. Monday through Friday. The State has decided to take a more aggressive approach and do more spraying for the WNV and EEE.

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

The Board Members did not have any questions.

7:15 p.m. Hooshmand S. Afshar/Taj Engineering – 100 Mass. Avenue – Request a Variance for work within 25 feet of the Flood Plain

Mrs. O'Rourke stated the next item on the agenda is Hooshmand Afshar, Taj Engineering, requesting a Variance for work within 25 feet of the Flood Plain at 100 Mass. Avenue.

Mr. Afshar presented a large scale drawing of the proposed dwelling to be located within 25 feet of the Flood Plain on Mass Avenue.

Hooshmand S. Afshar, Taj Engineering identified himself. Mr. Hooshmand explained that he was representing Thomas Von Wiegand, owner of the property located at 100 Mass. Avenue. The applicant is proposing to construct a two (2) car garage and a 1.5 story addition. Mr. Hooshmand pointed to the plans

and explained the proposed project. The applicant has received the approved order of conditions from the Conservation Commission. We are requesting a variance from the Board of Health because the entire property falls within one hundred (100) feet of the flood plain. Mr. Hooshmand pointed to the FEMA elevation of 190.1 and the Green Engineering Flood Plain. The existing dwelling is located within 100 feet of the buffer zone. The proposed work is within twenty-five (25) feet of the flood plain. The construction of the addition will improve the existing conditions of the flood plain. The new two (2) car garage will provide more protection to the resource areas by controlling any leaks or accidental spills from the cars which are currently being parked on a gravel driveway. The proposed addition will be eight (8) to ten (10) feet above the flood plain. The existing house was built in 1938.

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

Mr. Berube explained that there isn't going to be any filling of the flood plain and there will be no change in grades. All the work is outside of the flood plain. I don't see any issues with granting the variance.

Mrs. O'Rourke asked where the addition will be located.

Mr. Hooshmand explained that the addition will be located on the east side of the existing house. There will be no basement. The garage is a slab and the addition will just have a four (4) foot frost wall.

Mr. Reader asked if the new driveway would be pebble stone.

Mr. Hooshmand replied yes.

Mrs. Giroux asked will (flood) venting be needed for the garage or the addition.

Mr. Berube replied that it is not necessary for the garage. They are installing drywells for the roof runoff.

Mrs. Giroux asked will there be any bathrooms in the living space.

Mr. Hooshmand replied yes.

Mrs. Giroux asked is the current house on town sewer.

Mr. Hooshmand replied yes.

Mrs. Giroux asked if there was going to be more than one room.

Mr. Hooshmand replied there will be one large open room.

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

The Board Members did not have any questions.

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

Mr. Berube stated that there will be no work in the flood plain or change in the grades. The impact will be minimal. A Letter of Map Amendment (LOMA) was done and it was determined that the FEMA elevation was higher than the Green Engineering Flood Plain. I recommend granting the variance.

Mrs. Giroux made a motion to grant the variance of Board of Health Rules and Regulations, Chapter 5, Section 5.5.005 (1) in order to construct an addition within twenty-five (25) feet of the Flood Plain at 100 Mass. Avenue 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 construct a 1.5 story addition and a two (2) car garage addition to an existing single family dwelling located on a property that abuts Nutting Lake. The proposed additions are within twenty-five (25) feet of the FEMA Flood Plain and Green Engineering Flood Plain. However, the new additions will be approximately eight (8) feet above the FEMA Base Flood Elevation of 190.1 (NAVD88). There will be no change in grading nor any work within the Flood Plain.
- 3) The Board of Health has determined that the actions proposed by the applicant are adequate measures to protect the public health and environment and complies with the intent of Board of Health Rules and Regulations. Further, approval of the applicant's request will not be detrimental to the public health and environment.

CONDITIONS

Standard conditions number 1, 2, 3, 4, 5, 6, 9, 10, 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 Taj Engineering dated May 21, 2012 and stamped by Hooshmand S. Afshar, PLS# 38375.
- 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.

7:25 p.m. Bard Peripheral Vascular, Inc. – 129 Concord Road – Requesting Waiver of Regulations for work within the Flood Plain

Mrs. O'Rourke stated the next hearing is Bard Peripheral Vascular, Inc., 129 Concord Road requesting a Waiver of Regulations for work within the Flood Plain.

Mr. Sieber presented a large scale drawing of the site at 129 Concord Road.

Carl Sieber, Irwin Engineers, identified himself. Mr. Sieber explained that Irwin Engineers is representing the applicant, Bard. Mr. Sieber introduced Andrew Irwin, Irwin Engineers and Joseph Panniello, from Bard. The work that we are proposing is for the installation of four (4) projection well points for the Massachusetts Contingency Plan (MCP) immediate response actions at the property. These are part of ongoing response actions. The MCP Immediate Response Actions (IRA) modification plan has been submitted to the Massachusetts Department of Environmental Protection (DEP) and the Board of Health as well. Mr. Sieber pointed to the plan and explained the work that would be done in the flood plain. There are six installation points that are for the application of remedial additives. Each point will be constructed of two (2) inch PVC pipe. One (1) foot of PVC well screen will be installed to a depth of three (3) to four (4) feet below the surface and about one (1) foot of PVC riser will extend approximately two (2) feet above grade. That is where the connection will be made for the additives to be distributed into the subsurface. The additives will be gravity fed from a fifty-five (55) gallon drum in the paved parking lot next door. The work is further detailed in the IRA plan that was submitted to MassDEP and the Notice of Intent that was submitted to the Conservation Commission. Mr. Berube contacted Irwin Engineers regarding the application for a Waiver of Regulations from the Board of Health because of the work within the flood plain. The activities do not involve the construction or alteration of a building or structure. There will not be any changes to the ground surface area and there won't be any changes to the existing surface drainage. As part of MCP work these points are necessary. These points will be temporary and will be removed in two (2) to three (3) years after the completion of the applications. Mr. Sieber stated that he would answer any questions that the Board Members may have.

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

Mr. Kane reiterated that all the applicable Board of Health rules and regulations will be complied with and appropriately addressed.

Mr. Sieber replied yes all response actions that have been conducted and reviewed by MassDEP will be properly addressed.

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

Mr. Berube replied that this is part of an MCP clean up that is necessary to protect ground water and the Concord River, which is our water supply. I recommend that the Board grant the waiver.

Mr. Reader made a motion to grant a Waiver of Billerica Health Regulations, Chapter 5, Section 5.5.005 (1) to allow work within the flood plain at 129 Concord Road 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 5.5.005(1).
- 2) This project is part of ongoing Immediate Response Actions (IRA) associated with a release of perchlorate at the property in December of 2010. The source of the contamination has been eliminated and the proposed work is part of response actions under the Massachusetts Contingency Plan (MCP). The bulk of the perchlorate at the site is present in a plume extending from Building #3. IRA include the installation of extraction wells for pumping of groundwater into tanks for shipment offsite for proper treatment.
- 3) The applicant is proposing in-situ bioaugmentation to treat the plume area in conjunction with ongoing IRA. The proposed work in the Flood Plain consists of the application of bioremedial additives to the subsurface fed through temporary well points over a period of two (2) years. The impact to the Flood Plain is negligible.
- 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 construction must be in accordance with plans submitted for review and approval, prepared by Irwin Engineers, dated June 8, 2012.

Mrs. Giroux seconded. So voted unanimously.

7:35 p.m. OM Temple, Inc. – Boston Road – Continued Hearing for Variance request for work within the Flood Plain and Stormwater Management Approval

Mrs. O'Rourke stated the next hearing is OM Temple Inc., Boston Road, continued hearing for

a Variance request for work within the Flood Plain and Stormwater Management Approval.

Adam Brodsky, Attorney for OM Temple Inc., identified himself. Attorney Brodsky introduced David Kelly and David Mackwell from Kelly Engineering Group, Inc., Kanayo Lala, Project Engineer and Tej Tanden, President. Attorney Brodsky explained that at the public hearing held on May 7, 2012 Mr. Rider requested additional information. On May 30, 2012 Kelly Engineering Group provided the additional information to Mr. Jeff Rider. Mr. Rider submitted a letter on June 28, 2012 with some additional comments. My understanding is that there is an agreement regarding the outstanding issues that could be resolved. Attorney Brodsky stated that David Kelly is present to explain and answer any questions that the Board may have.

David Kelly, Kelly Engineering Group, identified himself. Mr. Kelly explained that David Mackwell was also present to answer any technical questions. Mr. Kelly stated that on May 7, 2012 the project was presented to the Board and the waivers that we are requesting relating to the project were described. On May 30th we provided a detailed response to the previous letter from Jeff Rider of Cuoco & Cormier and a subsequent summary of outstanding issues that were issued on May 10th, 2012. On May 30th we provided an official response to Jeff Rider. On June 28, 2012, Jeff Rider issued a subsequent letter with additional responses. As of this afternoon, Mr. Rider made a suggestion regarding conditions that the Board may consider incorporating in their decision. We have reviewed each of the thirteen (13) suggested conditions and have no issues with any of them. We have responded to some of them already. In our opinion, we will have no issue complying with these recommended conditions that were submitted by Jeff Rider. Mr. Kelly stated that he would answer any further questions that the Board may have.

Mr. Berube explained that the response is dated May 30th, 2012 however, we did not receive the submittal until June 14th, 2012. Included in the Board's package is a copy of the submittal from Kelly Engineer and Jeff Rider's report. They have satisfied everything requested. There are a few minor issues that need to be cleaned up which can be part of the conditions of approval and they can address the issues in their final report. Mr. Berube stated that Mr. Rider could answer any questions that the Board may have regarding his review.

Mrs. O'Rourke asked Mr. Rider if he could explain recommendation #5.

Mr. Rider replied that on the plans there is a line that is labeled "Limit of work/silt fence" in the details they have supplemented the standard silt fence with a fiber roll barrier which is the current state of the art erosion control. We would like to have clarification on the drawing that their intent is that the silt fence and the fiber roll will both be used and not just the silt fence.

Mrs. O'Rourke asked Mr. Rider about recommendation #10. What kind of paved surface would you like them to use.

Mr. Rider replied asphalt because it would be the cheapest and easiest.

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

The Board Members did not have any questions.

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

Mr. Berube replied that the applicant has provided all the information that we have requested. There are a few minor items that need to be taken care of. Recommendation #10 regarding the refueling area can be one of the Board's conditions and at a preconstruction meeting we can make that a condition that they need to adhere to. They have done a good job complying with our regulations.

Mrs. O'Rourke complimented the Kelly Engineering Group for a nice job done in complying with the Billerica Board of Health Rules and Regulations.

Mr. Kane made a motion to grant a variance of the Billerica Board of Health Rules and Regulations, Chapter 5, Section 5.5.005 (1) in order to construct a religious temple within the Flood Plain and stormwater management approval at the OM Temple, 240 Boston Road pursuant to Board of Health Rules and Regulations, Chapter 6 based on the following findings of fact and pursuant to the following conditions:

FINDINGS OF FACT

- 1) The work described in the applicant's request is within an area subject to protection under the Billerica Health's Rules and Regulations, Chapter 5, Section 5.5.005 (1) and Chapter 6 inclusive.
- 2) The Board of Health conducted a public hearing on May 7, 2012, continued to July 2, 2012 and properly notified abutters in accordance with the Billerica Health Regulations, Chapter 1, Section 1.2.007.
- 3) The applicant proposes to construct a temple building and associated infrastructure on a ten (10) acre lot of land along the Concord River. The property is 99.5% within the Green Engineering Flood Plain (adjusted elevation 119 NGVD 29) as identified on Map #51 and 55% below the FEMA Base Flood Elevation 115 NAVD 88. The proposed building will be connected to the town water and sewer systems.
- 4) The proposed project will minimally alter the existing grades. There will be cutting and filling for regrading to provide adequate drainage for the proposed impervious areas. The net result of the earthwork will increase the flood storage capacity of the property and not displace floodwater during a one hundred (100) year storm event. The impervious areas shall be limited to the driveway and roof of the proposed building. The temple building will be constructed on columns which will allow the rise and ebb of potential flood waters underneath the structure.

- 5) The applicant requested the following waivers to the Board of Health Stormwater Management Regulations pursuant to Board of Health Rules and Regulations, Chapter 6, Section 6.8.001:
 - a) A fifteen (15) foot wide access way around the infiltration basins is required for maintenance purposes. The basins are small and are accessible for maintenance from the parking facilities.
 - b) The infiltration basins require one foot of freeboard. The proposed infiltration basins are small with small impoundment areas. Providing the required freeboard would increase filling within the flood plain and further impact to the flood plain.
 - c) The vertical separation distance of the bottom of the infiltration system above the high groundwater elevation shall be two (2) feet. The system and project site would have to be raised to provide the two (2) foot separation. This would result in additional filling and disturbance of the flood plain.

- 6) The Board of Health can waive and exempt strict compliance with any requirement of the Stormwater Management By-Law and its Stormwater Management Regulations where it makes a finding that such action is
 - a) Allowed by federal, state and local regulations: A Final Order of Conditions (FOC) has been issued by the Department of Environmental Protection under the Massachusetts Wetlands Protection Act for the project. The project will also comply with an Environmental Protection Agency (EPA) National Pollutant Discharge Elimination System (NPDES) Permit.
 - b) In the public interest: Issuance of the waivers will allow the proposed project to minimize the disturbance of land and vegetation within the wetland buffer zones and flood plain area thereby maintaining open space in the public interest.
 - c) Consistent with the purpose and intent of the Town of Billerica Stormwater Management By-Law and the Board of Health's Stormwater Management Regulations: Granting the waivers is consistent with protecting public health, safety and the environment by reducing the size of the development and decreasing the impact to the flood plain.

- 7) The project was reviewed by Jeffrey Rider of Cuoco & Cormier Engineering Associates, Inc. the Board of Health's Consulting Engineer, for potential impacts to the Flood Plain as well as compliance with applicable drainage regulations.

- 8) Previously, the Board of Health granted a variance (Variance #05-22-19-005) on January 3, 2005 to the OM Temple for the construction of a larger project that included 146,019 square feet of flood plain disturbance. The current proposed project has been reduced to 51,569 square feet of disturbance, less than one half of what was originally approved by the Board of Health.

- 9) The applicant acknowledges that the physical limitations of the property and potential flooding hazards will restrict the use of the property and any proposed structures.

- 10) The Board of Health will impose reasonable conditions to ensure the project is constructed in accordance with approved plans.
- 11) The Board of Health has determined that the actions proposed by the applicant are adequate measures to protect the public health and environment and complies with the intent of Board of Health Rules and Regulations. Further, approval of the applicant's request will not be detrimental to the public health and environment.

CONDITIONS

Standard conditions number 1, 2, 3, 4, 5, 6, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28 and 29 in accordance with the Board of Health regulations and Special Conditions:

- A) All construction must be in accordance with plans submitted for review and approval, prepared by Kanayo Lala dated May 18, 2012 and stamped by Kanayo H. Lala RPE#33710-C.
- B) The applicant shall provide detailed plans for the construction of the proposed building for review and approval by the Board of Health's Consulting Engineer and the Director of Public Health.
- C) All conditions stipulated by the Department of Public Works for the construction of the sewer connection and water main shall be considered part of this order of conditions imposed by the Board of Health for the approval of this proposed project.
- D) The applicant shall provide a copy of the Department of Environmental Protection approval for this proposed project prior to the approval of any permits.
- E) The applicants must sign an acknowledgement statement (Attachment "A") regarding the noise and odor potentials and are responsible for notifying all occupants of the property. The acknowledgement statement shall read:

The owners/occupants acknowledge that I/We are aware of the Department of Public Works activity adjacent to the OM Temple property, located on Boston Road, that may generate noise and odors.
- F) The use of the building is restricted to religious purposes. The building shall not be used for residential purposes. This condition shall serve as a deed restriction.
- G) The building and parking facilities shall not be occupied during a one hundred (100) year storm event and if the roadway/parking facilities are flooded.
- H) This variance and stormwater management approval supercedes Variance #05-22-19-005 granted by the Board of Health on January 3, 2005.

- D) The applicant shall address all outstanding review comments in the engineering report dated June 28, 2012 from the Board of Health's Consulting Engineer. Revised documents shall be provided to the Board of Health and the Board of Health's Consulting Engineer (Attachment "B").

Mrs. Giroux seconded. So voted unanimously.

8:00 p.m. Via Dell Amore, Inc. – 749 Boston Road – Request Variance for work within the Flood Plain

Mrs. O'Rourke stated the last hearing is Via Dell Amore, 749 Boston Road, requesting a Variance for work within the Flood Plain.

Attorney Lentine provided the Board with a Flood Mitigation Memorandum stating the measures that would be taken to minimize potential flooding.

Stephen Lentine, 409 Boston Road, Billerica identified himself. Attorney Lentine explained that he is representing the petitioner, Via Dell Amore, Inc. d/b/a Via Dell Amore Restaurant at 749 Boston Road. In November 2010 we went before the Zoning Board of Appeal because of a change in ownership. Salvatore "Tory" Turco's family owns the property and Tory is present tonight. Tory is the principal owner of the new corporation of the restaurant. Angelina's Restaurant was the previous tenant and the Department of Revenue seized their assets because of non-payment of taxes and placed a tax lien on the establishment. The Turco family stepped in and purchased the equipment from the Department of Revenue at an auction and proposed to open a new restaurant under their new corporation's name. A Special Permit was granted by the ZBA in November 2010. At that point we applied for a common victualler's license. I went to the Board of Health for a signoff for the common victualler's license when Richard Berube, the Director told me that we needed to apply for a variance. I disagreed because the renovations that were being made to the interior were minor. I did not think the renovations warranted a variance under the flood plain regulations. The proposed work was going to be interior work on the counters and the seating area. The footprint is going to remain the same as the existing restaurant. We came before the Board of Health in February 2010. The Board expressed their support in favor of Mr. Berube's request that the applicant needed to apply for a variance which resulted in an updated plan that was filed with the application for the variance. One of the major improvements that is shown on that plan is a new six (6) inch gravel base under the dumpster. The dumpster will also be enclosed with a locked gate to prevent flooding issues. One of the most significant improvements is the new grease trap that will be installed. The proposed grease trap will have bolted down gasket covers to prevent flooding. There will also be a new sewer manhole installed which will also have bolted down gasket covers. The proposal is to construct a raised floor. The walk-in refrigerator is currently below the flood plain level. The refrigerator will be raised above the flood plain level. All the food that is stored will be above the flood plain level. All the electrical panels are above the flood plain level. We have made a commitment to the Town that if flood waters did infiltrate the building all the food would be removed and thrown out and all the kitchen utensils including dishes would be disinfected and sterilized before using them again. We have made some major improvements to make this restaurant flood proof and less threatening to public health and prevent contamination of grease into the Shawsheen River and the sewer system. We

feel that a good faith effort is being made on the part of the Turco family. Matt Hamor, Project Engineer is present to answer any technical questions that the Board may have.

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

Mr. Kane asked what the Green Engineering Flood Plain (GEFP) elevation is.

Matt Hamor, Project Engineer, Hancock Associates, identified himself. Mr. Hamor replied that the elevation is delineated. The elevation is approximately 97.5. The one hundred (100) year Green Engineering Flood Plain (GEFP) elevation is 98. Mr. Hamor pointed to the plan and explained the flood plain areas.

Mr. Berube explained that in the Board's package is a copy of the FEMA flood plain which is higher than the GEFP. Mr. Berube explained that most of that area is within the FEMA Flood Plain.

Mrs. Giroux asked what other items would the town be looking for regarding the flood mitigation that was not addressed in the presentation.

Mr. Berube replied that he has met with Salvatore Turco and Attorney Lentine at the site to discuss the flood mitigation issues. I find that the flood mitigation plan to be unsatisfactory. I have provided Mr. Turco with a couple of websites that offer different alternatives to flood proof the building. I discussed a few of the alternatives with Mr. Turco. One of the alternatives is to install flood shields around the building. Another alternative would be to construct a flood wall. These are not unreasonable methods to try to keep the flood waters out of the establishment and the cost should be relatively low.

Attorney Lentine explained that he has discussed these options with Matt Hamor. The problem with the wall around the building is that we would have to go back before the Conservation Commission because there would be filling within the flood plain. We would also have to apply for another variance from the Board of Health because of filling in the flood plain.

Mr. Hamor explained that there would also be some issues with MassDEP because of filling in the flood plain. There would be some issues related to the handicap access. The handicap ramp will have to be at elevation 98 coming into the entrance of the building. In terms of the volume there will be approximately 350 gallons of displaced water. The flood mitigation is for a short period of time. There are other ways of the water coming into the building such as through sewer pipes, water mains, electrical conduits and the walls of the building. There will be a significant amount of work to do if we have to provide compensatory storage for that small volume.

Mr. Reader asked was this property under water the last time that the Shawsheen River flooded substantially.

Attorney Lentine replied that he did not know how much water penetrated the building.

Mr. Reader asked how much water was in the building.

Mr. Turco replied about eight (8) or nine (9) inches of water came into the building.

Attorney Lentine reiterated that if the water comes into the building all the food would be thrown out and the utensils would be cleaned and sterilized. There are several restaurants in Billerica that are within the flood plain. This is not the only restaurant that has a water problem. We are not changing the structure. The Building Commissioner, Mark LaLumiere told Tory that he did not need a building permit for the work that he would be doing inside the restaurant. There are some major improvements that are going to be made to the property like the grease trap, the sewer manhole and the dumpster. We are taking steps to create a better situation at the site than before. We are going to safe guard the flood plain and the public. Attorney Lentine explained that he has a vacation home in Marshfield and there are a lot of restaurants along the water that get flooded from time to time. They close down during the event and open when the Board of Health allows them to.

Mr. Reader asked is there any other businesses operating at that property now.

Attorney Lentine replied yes, the recording studio.

Mr. Turco stated and the Swing Senter.

Mrs. O'Rourke stated that when Jack Morris was the director, we had a problem with flooding at the Swing Senter. Mrs. O'Rourke explained a situation that happened years ago and she remembers that the recording studio was flooded and everything had to be removed. What concerns me is that it was a lot of water and not just a little.

Attorney Lentine stated that there are hundreds of houses in Billerica that are in the flood plain. We are trying to make improvements and permitting for minor renovations at a reasonable cost. With these changes it will be a better situation than what existed before. There are no major renovations being done. There will be minor alterations to the interior of the building.

Mrs. O'Rourke asked are the renovations going to help the other businesses that are in that block of stores.

Attorney Lentine replied that the building will benefit from the sewer manhole. The grease trap relates to the restaurant.

Mr. Hamor replied there is no benefit to the sewer manhole. The building is already tied into sewer.

Mr. Berube stated there will be a cost to the business if the building floods and you have to shut down. If you shut down there will be a loss of revenue, you will have to discard all of the food items

and there will be an added expense to cleanup the establishment in order to reopen. I think it would be worth it to try to do something to protect and flood proof the establishment.

Attorney Lentine replied those costs are small in comparison to having to flood proof the entire building. There won't be any more than three (3) or four (4) days of food supply that we will have to throw away.

Mr. Berube stated if there is flood damage to the building it could be expensive to repair before the establishment could reopen.

Attorney Lenine stated that there are times when this building has flooded in the past. The building has been there for at least fifty (50) years and there has never been any major structural damage. The Shawsheen River does not flood as frequently as the Concord River.

Mr. Berube replied the Shawsheen River does flood as frequently as the Concord River. The latest statistics indicate that there will be more flooding in the future than there has been in the past. The weather pattern has changed. We will probably see more flooding in the future.

Mr. Hamor explained that there will be a problem with compensatory storage. When we fill in the flood plain, for every linear foot we have to displace the same volume per that linear foot of elevation. So for a 97-98 filling we have to find somewhere on the property that is 97-98 to take away. I am not sure we have that on this property.

Mr. Berube asked are you referring to providing compensation within the flood plain.

Mr. Hamor replied yes.

Mr. Berube stated that the Board has allowed compensation within the flood plain in the past.

Mr. Hamor explained that MassDEP is a little more stringent on what happens in the flood plain than in the past. Not only do I have to provide compensatory storage I have to mitigate the flood waters per the performance standards for work within the flood plain.

Mr. Berube explained that he met with Mr. Turco and went over a few different possibilities on how to flood proof the structure. I suggested that he could seal the foundation of the building and build a wall around the doorways with gates. That type of work will not be major construction.

Attorney Lentine asked will a doorway with gates be compliant with the American Disability Act (ADA).

Mr. Berube explained that a plan would have to be designed. A simple concrete wall could be built around the doorways with an opening where you could put in a gate and slide a panel in times of floods otherwise it would be open and you would not have to worry about the handicap access.

Attorney Lentine replied that he would refer that to Mr. Hamor because he did not know if that would require action from MassDEP and the Conservation Commission.

Mr. Berube replied that if the Board agrees to that he did not think that would be a problem with the Conservation Commission because the Board of Health and the Conservation Commission work closely together.

Mr. Hamor stated when we design buildings in a flood plain we usually design it so that water can flow through the building by using smart vents or some other kind of mechanism that water can flow through the building.

Mr. Berube stated unfortunately we have an existing structure and from what Attorney Lentine has indicated in the past that it was not possible to install vents for the water to flow through.

Attorney Lentine explained a situation in Marshfield where the foundation got flooded and during the reconstruction process screened vents were installed.

Mr. Hamor explained that in many of the most recent filings that he has done with MassDEP for filling in the flood plain he has found that DEP is more stringent on how you provide the compensatory storage for those volumes. If the main concern is that materials don't leave the restaurant there could be some strict protocol to ensure that if it happens there would be a fine. This entire facility is in the flood plain. If the water wants to go into the building you should let it go into the building and there should be a protocol to make sure that there is no contamination. The DEP is going to look at how the filling or displacing of the water is going to affect the neighbors and the abutting properties. If there is flooding everything should be shut down. Maybe the business has to be shut down until the flood waters recede so that everything stays within the structure.

Mr. Reader asked does this property have any of those flood screens.

Attorney Lentine replied not that he is aware of.

Mr. Hamor explained that the building probably does not have any of those flow through designs. If you are within a foot of flood stage the business has to be shut down and the vehicles will need to be removed until the water recedes.

Attorney Lentine explained that we are trying to make the situation better than what previously existed at the site when Angelina's Restaurant was operating there.

Mr. Hamor explained that all the shelving items could be stored a foot or two above the one hundred (100) year flood plain and the storage locker would be locked.

Attorney Lentine explained that there is flooding at the Riverview, The Pongal and The Jade Pacific. There are other restaurants in town that are more prone to flooding.

Mr. Berube replied that he disagreed because this establishment is more prone to flooding. The other establishments get water in their basements not on the main floor where they operate their business.

Attorney Lentine replied that if the establishment is shut down during the event then there would not be any danger to the public.

Mr. Hamor explained that when there is a flood event there is usually a six (6) to twelve (12) hour window that would enable the restaurant to shutdown to make sure they have followed protocol.

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

Patricia Flemming, 753 Boston Road, identified herself. Ms. Flemming explained that she lives next door to the establishment. Ms. Flemming asked where the sewer manhole was going to be located.

Mr. Hamor pointed to the plans and explained where the sewer manhole and grease trap were going to be located.

Ms. Flemming explained that when the flooding event occurred in March 2010 she had to leave her home for nine (9) days. I had eight (8) feet of water in my home. Lately it has been getting worse. How many seats are there going to be in the restaurant and where will the cars be parked? I am not against the restaurant but the area does flood. We are in a bad area. I am worried about how the flooding will affect my property. I am concerned that if anything is done to their property it will affect my property.

Mr. Hamor replied there will be twenty-four (24) seats in the restaurant. Mr. Hamor pointed to the plans and showed the area designated for parking

Mr. Berube explained that they have come a long way in addressing all the other issues that were raised. However, I am not convinced that they have fully explored ways to flood proof the building.

Mr. Reader asked would installing vents help.

Mr. Berube replied that he did not think they could install vents. I think they should pursue looking at ways to flood proof the establishment and provide the Board with the information of what they can and can not do. What are the pros and cons? Maybe it would be best to leave the establishment alone but at this time I am not fully convinced that there isn't anything that can be done. As you have heard from Ms. Flemming she does not want any further impact to her property. Until I see everything in writing I cannot approve this project the way it is.

Attorney Lentine stated that he asked Mr. Hamor if that was a reasonable thing to do and would it be more beneficial to install the vents in the foundation of the property rather than divert the water around the building? Mr. Hamor indicated to me that project is not that expensive

Mr. Hamor replied when you are dealing with the flood plain there are all sorts of things that can affect the flood plain. This is a very small amount of volume to displace. Every cubic foot has to be displaced by a cubic foot in a different spot. DEP would rather have the smart vents installed and have the water go through the restaurant at the existing grades.

Mrs. O'Rourke asked why.

Mr. Hamor replied because they do not want to fill in the flood plain. If you fill in the flood plain DEP wants you to take it away from somewhere else. Mr. Hamor explained that it has to be taken away at the same linear foot of elevation.

Mrs. O'Rourke commented and you do not have it.

Mr. Hamor replied that he is not sure.

Mr. Berube explained that he does not have the on the ground survey, so we do not know.

Mr. Hamor explained that DEP does not want the flood plain filled in. DEP would rather you install vents and have a crawl space with vents for the water to go through.

Mr. Reader asked can the smart vents be installed on this property.

Mr. Hamor replied that smart vents can be installed on this property. Mr. Berube does not want the water to go through this restaurant. He wants the building to be flood proof and water tight so that the water cannot come into the restaurant. DEP would rather it is flood proof so that the water go through the building. There are other methods used so that the water comes into the building. Mr. Hamor explained all the things that can contribute to water coming into the building.

Attorney Lentine explained that all the applicant wants to do is make some minor renovations inside a previous sub and pizza restaurant and make it a better place to serve the public. If a flooding event occurs the restaurant will have to be closed per order of the Board of Health. Then everything will be removed and all the utensils will be sterilized and disinfected.

Mr. Hamor explained that he has been involved with the construction of many homes and it is not that easy to add concrete and raise the floor. There is a lot of rippling effects that it has with frost walls, partitions, the handicap ramp and redoing portions of the entire structure.

Mrs. O'Rourke asked by raising the floor will that take care of the problem.

Mr. Hamor replied it may not. Mr. Hamor commented that he thinks this problem can be easily solved without raising the floor.

Mr. Kane commented that the first issue is the flood mitigation in the flood plain. I don't see us being able to change the existing structure. Throwing away food or a five (5) gallon grease container from the fry-o-later is not a major concern. In this case we have a food service establishment that we can close if it floods. To reopen this establishment would require a huge amount of cleaning. We have a change in operator of this restaurant so that what happened before is the past and now we need to protect the public health and public interest. We have a restaurant whose primary serving and preparation area has a floor one foot below the flood plain and has a history of flooding whether it is two, four, six, or eight inches of water. The Board's concern is that the primary retail and food preparation floor has been under water and continues to be below the flood plain. That is why Mr. Berube is saying that he wants to flood proof the building and protect the public health. If your house has been flooded you know how hard is it to clean up the mess and how many times did you have to clean because you missed something. How many times has black mold been found because something was missed? Even though the renovations are minor as a result in the change of operators we need to look at this as a public health issue as well as our flood concern. With a history of flooding how do we mitigate that public health hazard? How do we ensure that this restaurant is going to be safe post flood and be able to be effective? The ten (10) items that you have on your list are all reasonable approaches but that is not enough to address the facility that has a history of flooding.

Attorney Lentine replied that the restaurant cannot reopen once we are shut down by the Board of Health order until the Board of Health allows us to reopen. We have to satisfy the Director that we have done everything possible to ensure public safety.

Mrs. Giroux stated that the Board is trying to put safe guards into effect to shorten that time for you. Mrs. Giroux commented that at this point in time we could continue going back and forth so I would like to make a motion.

Mrs. Giroux made a motion to continue the hearing to review and revisit the flood mitigation plan and the health plan.

Mr. Kane seconded. So voted unanimously.

Attorney Lentine asked if the Board would like a draft plan for the installation of the flood vents.

Mr. Berube suggested that he could meet with the applicant on the site to discuss this further and come up with some different approaches. Mr. Berube stated that he would contact Attorney Lentine to set a date and time to meet and go over the other alternatives. Then the applicant can come back at the next Board of Health meeting in August to present their plan.

The next Board of Health meeting will be held on August 6, 2012.

Open Microphone

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

No one was present for open microphone.

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

The Board adjourned at 8:45 p.m.

Respectfully submitted,

Sandra Giroux
Secretary

Joanne M. White
Recording Clerk