

BOARD OF HEALTH MINUTES
September 10, 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 July 2, 2012.
Mr. Kane seconded. Three (3) voted in favor. One (1) vote abstained (Mike Grady).

Mr. Grady made a motion to accept the Meeting Minutes of August 6, 2012.
Mrs. Giroux seconded. So voted unanimously.

BOARD OF HEALTH BUSINESS

Reorganization

Mrs. O'Rourke stated the first item under Board of Health Business is the Reorganization of the Board Members. Mrs. O'Rourke requested that a motion be made.

Mr. Kane made a motion to nominate Marie O'Rourke, as Chair, Robert Reader as Vice Chair and Sandra Giroux, as Secretary.

Mr. Grady seconded. All voted in favor.

Health Department Activity Reports

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

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Copies of the Health Department Activity Reports for the month of August have been included in the Boards package.

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

Mr. Berube stated that at the last meeting, Mr. Reader asked how many cases of Lyme disease have been reported. In Christine's report it states that there have been twelve (12) reported cases of Lyme Disease in the past month.

Mrs. O'Rourke asked if there have been any reported cases of the West Nile Virus or Triple EEE in Billerica.

Mr. Berube replied not at this time.

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. There will be a court hearing on September 27, 2012 for the probate matter at 78 Pinedale Avenue. Hopefully at that time the matter will be resolved, then Mr. Mitchell can move forward with the sewer connection.

Mrs. O'Rourke asked Mr. Berube if he could clarify the no change in status on Phavy's report. Does Phavy conduct follow-up inspections at the all the properties that have issues?

Mr. Berube explained that before Phavy writes her monthly report she conducts follow-up inspections to see if anything has changed.

Mrs. O'Rourke asked about the status of the failing septic system at 1 Mitchell Road.

Mr. Berube explained that after Phavy wrote this report she spoke with Mr. Litwinsky and he informed her that the sewer connection should be completed in October.

Mr. Reader asked does the Plaza Place Condominium have their own sewer system.

Mr. Berube replied that the Plaza Place Condominium sewer service is private. The town is not responsible for the pump station.

Mr. Reader asked who constructed the pump station at Plaza Place Condominiums.

Mr. Berube replied that Plaza Place Condominium constructed their own pump station.

Mr. Reader asked does it still pump to the town's sewer plant.

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Mr. Berube replied yes, but Plaza Place is responsible for the maintenance of the sewer system and pump station on their property. There are several places in town that have their own sewer systems.

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

Mr. Reader asked what is being done about the bagster situation in town.

Mr. Berube replied that he is in the process of working something out with O'Connor Hardware. A contract has been signed with Waste Management and he is also going to look into that as well.

Mr. Grady commented that the illegal dumping at 334 Salem Road was cleaned up and then more bulk items were dumped. However the new items were cleared out within 3 days.

Mr. Berube replied that is a situation that Phavy will continue to monitor.

Mr. Grady explained that they responded quickly to removing the new items. Mr. Grady thanked Phavy for keeping on top of the situation.

Mr. Berube stated the last report is from Health Agent, Gary Courtemanche.

Mrs. O'Rourke asked what is the problem on Billerica Avenue.

Mr. Berube explained that in the past, the Board approved the Tradesman Industrial Park project. Tradesman sold the property to David Crescio. Crescio has cleared the land and done nothing else. Now it appears that the property has become a dumping site.

Mr. Reader asked what is the pile of stuff that looks like concrete.

Mr. Berube replied it is granite slabs.

Mr. Reader asked what they are going to do with the slabs.

Mr. Berube stated that he thought they were looking to use it as fill material. I told Mr. Crescio that would not be acceptable. If they want to use the granite as fill material they would have to come before the Board.

Mrs. O'Rourke asked what is the new building that is being built in that area.

Mr. Berube replied that building is on property owned by Jon Metivier. Jon is constructing five (5) garage units. I have reviewed and approved the project plans.

Mr. Kane stated that he has a questions regarding Phavy's report. Mr. Kane asked about the

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sound study that was suggested at Pace Industries Cambridge Tool, 67 Faulkner Street.

Mr. Berube explained the person that originally filed the complaint hasn't reported any further incidents. The Building Commissioner, Mark LaLumiere was involved and Cambridge Tool did some work on the rooftop units, which seemed to resolve the problem. We were looking to have a noise study conducted to verify that the problem has been resolved.

Mrs. O'Rourke asked was the noise coming from inside or outside the building.

Mr. Berube replied outside the building.

Mr. Kane asked about the noise problem at 36L Montbatten Road. Was this a noise complaint from the Police Department?

Mr. Berube explained that a neighbor called to complain about the residents residing at 36L Montbatten Road. The residents were allegedly conducting a mulching operation which was creating a lot of noise in the neighborhood. Phavy investigated the complaint and did not find any evidence to support it. Phavy will continue to monitor the situation.

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

The Board Members did not have any questions.

Mr. Berube explained that on Wednesday, September 5, 2012, he closed the McDonald's located at 273 Boston Road, North Billerica because they had a leak in the ceiling coming from the air conditioning units. The air conditioning units iced up and water dripped through the duct work inside the establishment. The establishment was closed temporarily until the duct work was replaced. They were closed for approximately five (5) hours.

Mr. Berube explained that the last item he would like to inform the Board about is the OM Temple. We received word from the applicant that he was not happy with three (3) of the conditions in the Order of Conditions. One of the conditions is regarding the bond that has to be posted for the project, the second is the signing of an acknowledgement of the presence of the Department of Public Works (DPW) yard and the activity that goes on in the DPW yard and the third is the fact that the building is restricted for religious purposes. The applicant did not care for those three (3) conditions. Marie O'Rourke, Chair and I met with the applicant to see if we could work things out. We reached an agreement regarding the amount of the bond to be posted. However, they were very adamant about signing an agreement regarding the activity at the DPW yard and they did not want the building to be restricted for religious purposes. We could not come to an agreement with Mr. Tanden. I explained to Mr. Tanden what the procedure is if he wanted to modify those conditions and that he would have to come back before the Board at a public hearing. Mr. Tanden refused and stated that he did not want to do that. Mr. Tanden stated that he wanted to take this matter to court. I advised the Town Manager,

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John Curran and Town Counsel, Patrick Costello of this situation. Town Counsel is going to get in touch with Mr. Tanden's attorney to see if the matter can be worked out without going to court.

Mrs. Giroux asked what is his reason for not wanting to sign the DPW acknowledgment.

Mrs. O'Rourke explained that Mr. Tanden said that DPW was throwing things over the fence into his yard. Mr. Tanden really did not comment any further.

Mr. Berube commented that Mr. Tanden said that he has a good relationship with Abdul Alkhatib, Director of Public Works, however that was all he said. Mr. Berube replied he did not understand why Mr. Tanden would not sign the acknowledgement.

Mrs. Giroux asked what is his problem with restricting the building for religious purposes.

Mrs. O'Rourke explained that he does not want the building to be restricted for religious purposes. However, that is the reason why the Board granted the variance because you cannot infringe on their first amendment rights of the constitution.

Mrs. Giroux explained that at the meeting it was stated that the building was going to be used for limited usage for religious services. It was not going to be used for a school and no one was going to be living there.

Mr. Berube replied that was the reason why the Board granted the variance. They presented this project as a religious facility so that is how we approached it. I think they were granted exemption from the Site Plan Special Permit process from the Planning Board for religious use, so that means that they will have to go back before the Planning Board.

Mrs. O'Rourke stated that Mr. Tanden may have to start the process over.

Mrs. Giroux asked what is the issue with the bond? Everyone that is pursuing a new project has to post a bond.

Mrs. O'Rourke explained that he was concerned that he may have to put up front the full amount of \$250,000.00 for the bond. Mrs. O'Rourke explained to the Board Members that Mr. Berube informed Mr. Tanden that he could break down the cost of each site plan construction activity and post a bond equal to 10% of the cost for each step. We all agreed on that. The bond amount is the only condition that we could agree upon. Mr. Berube and I asked him to come before the Board and Mr. Tanden stated that he did not want to come before the Board.

Mr. Berube stated that he would keep the Board advised on that matter.

Mosquito Control Program

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

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Mr. Berube explained that August was an active month for mosquito control. West Nile Virus and Triple EEE has been in the news. The West Nile Virus was detected in Billerica on two (2) occasions. The first incident was on August 16, 2012. Mosquitoes were collected from Woodcrest Circle and that area was sprayed on August 23, 2012. The second WNV incident was found on Ilford Road in North Billerica and that area was sprayed on August 30, 2012. The residents in both areas were notified by the Police Department via Code Red Alert. Since then there has been no reported cases in Billerica. On Thursday, September 13, 2012 all the school properties and recreational fields will be sprayed because of all the after school activities and sports. Notices will be sent home with all school children to inform the parents of the spraying.

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

The Board Members did not have any questions.

Proposed Bodywork Regulations

Mrs. O'Rourke stated the next item is the proposed bodywork regulations. Police Chief Dan Rosa is present to explain the purpose of the bodywork regulations.

Chief Rosa explained that several years ago the State took over the regulations of all massage parlor and massage therapists' licensures. It was a function of the Board of Health and the State took it over. When the State passed the bill they fell a little short in the regulations. The people found a loop hole around the massage licensing and regulations and opened establishments where Asian Bodywork, Reflexology, Acupressure, Shiatsu and Bodymind Acupressure were performed. Those types of bodywork don't fall under the massage therapy licensing under the State. Unfortunately, there is an establishment in Town known as the Gold Fish Spa that generated a lot of complaints. The Police Department received a lot of complaints from resident's regarding this operation. We did an undercover study and were able to arrest someone. The case is pending in district court. There is only one person that enforces the massage regulations for the whole State. The State Inspector came out, was helpful and fined that establishment. He suggested to me that we adopt a by-law or some kind of regulation. We looked at other communities. The State Inspector gave us some suggestions. Town Counsel, Patrick Costello recommended that the Board of Health accept the regulation under the Massachusetts General Law rather than create another by-law.

Mrs. O'Rourke asked who is going to enforce these regulations.

Mr. Berube replied the Board of Health, like we used to.

Mrs. O'Rourke commented the State took over the massage therapy licensures and now we are getting it back.

Mr. Berube replied we are going to enforce the proposed bodywork regulations. There are certain areas that are not covered by the State. They were not as thorough in their regulations as the

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Board of Health. Unfortunately they left a lot of gaps in their regulations and a number of establishments fell through the cracks.

Mrs. O'Rourke stated that this is not going to involve nail salons or beauty salons.

Chief Rosa explained that under exemptions it states that any physician, chiropractor, osteopath, nurse, nurse practitioner, physical therapist, massage therapist or acupuncturist shall be exempt from these regulations because they are licensed by the State. However, people have found a way around this by calling it Asian Bodywork. We learned about this from the State Inspector. We also found out that there is another establishment in Billerica that is advertising Asian Bodywork.

Mr. Reader asked what is Asian Bodywork.

Chief Rosa explained that Asian Bodywork is unlicensed massage therapy.

Mr. Reader asked is that place in Pinehurst still open.

Chief Rosa replied to some extent. Since it made the papers the business has curtailed quite a bit. However, they are technically still in business. Since that time we have discovered a second place in town that is advertising Asian Bodywork. Since there are no regulations, they don't have to be licensed so they can just hang a sign and open for business.

Mrs. O'Rourke asked where did they get the permit from.

Chief Rosa replied they don't have a permit.

Mrs. O'Rourke asked is Gold Fish Spa registered with the Town Clerk as a business.

Chief Rosa replied yes.

Frank Mirasolo, Sargent with the Billerica Police Department, identified himself. Mr. Mirasolo explained that Gold Fish Spa applied for a permit with the Building Department to do a lot of renovations. They did follow the process. There is no permitting process for an Asian Bodywork establishment.

Mrs. O'Rourke asked where did you get these draft rules and regulations.

Sargent Mirasolo explained that he did some research and found that Belmont, Boston, Cambridge and Newton have these rules and regulations governing Asian Bodywork. I spoke with the State Inspector and found out this problem is happening all over the State. A lot of cities and towns are enacting these by-laws to curtail these problems with the Asian Bodywork establishments.

Mrs. O'Rourke stated so if the Board of Health adopts these rules and regulations, they will have

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to come before the Board of Health for a permit.

Chief Rosa replied that not only will the establishments have to apply for a permit so will each massage therapist or person that does that type of bodywork have to apply for a permit.

Mr. Berube explained that the Board of Health will handle the permits like we did before. Each establishment and each massage therapist will have to apply for separate licenses.

Mr. Reader stated so the massage establishments and massage therapists are coming back to us as opposed to the State.

Mr. Berube explained that the State will still have jurisdiction over massage therapy but the local Board of Health will fill in the gaps where they lack jurisdiction. It will allow the establishments that want to be in business to have rules and regulations to comply with. I will review our old rules and regulations and revise some of them to be applicable for this particular situation.

Mrs. O'Rourke stated that our massage therapy rules and regulations must be old.

Mr. Berube explained that we have had massage therapy in the regulations for quite some time.

Mrs. Giroux replied that the Board was in the process of revising the rules and regulations but then the State took over so we didn't revise them.

Mr. Grady asked what the fee schedule will be.

Mr. Berube replied that he does not know. Mr. Berube explained that he would review the draft that Chief Rosa has provided and look at the old rules and regulations and incorporate them. When the Board adopts the rules and regulations then a new fee schedule will have to be adopted as well. They have included a fee schedule in the draft that we will probably use as a guideline.

Chief Rosa explained that the applicant has to provide some kind of a national license that they are certified when applying for a permit from the Board of Health. This will also control the advertising of these places.

Sargent Mirasolo explained that in Section 9 Advertising (of the proposed Bodywork Regulations) it states that the establishment owners and therapists shall be mindful of professional ethics when placing advertisements. Advertising in periodicals and newspapers that appeal to prurient interests or advertising in a manner that uses sexual or provocative language and or pictures to promote business may be construed as a breach of proper standards of bodywork. If you go on to the internet you will see that they are advertising on web sites such as Craig List and BostonBackPage.com. That is where they have been advertising. I became aware of this situation when I was on the internet and noticed that it was also advertised in the Phoenix magazine and newspapers.

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Mrs. O'Rourke asked Chief Rosa if he had any comments.

Chief Rosa explained that he will work with Richard Berube, Director of Public Health to come up with the final version of the rules and regulations.

Mrs. O'Rourke asked will there be a public hearing for the new massage therapy regulations.

Mr. Berube replied yes.

Mrs. Giroux asked where the other establishment in Billerica is located.

Chief Rosa replied the Bear Hill area.

Mr. Berube stated that the new regulations will probably be ready soon.

Mr. Grady asked is there any special place where these people have to go to be certified.

Chief Rosa replied that they have to go through a massage therapy course to be certified. They are basically skirting the law by calling themselves Asian Bodyworks because they don't have a license to do massage therapy and that is what they are doing. When I talked to the State Inspector he told me that it was being done all over the state. After the sting, someone called the Gold Fish Spa to make an appointment for a massage and they said they do not do massages, they only do Asian Bodywork. They know what they are doing is wrong. After the arrest they kept advertising as Asian Bodywork.

Mr. Berube stated that on the first page of the proposed regulations under the definition of bodywork it explains what the name refers to. Whatever the State does not cover, the Board of Health will cover.

Chief Rosa explained that there will be a background check on each person that applies. If they are charged with some sort of crime or a problem with some sort of business they will not be eligible for a permit.

Mr. Kane stated that he wants to make sure that this will apply to all businesses and there will be no grandfathered businesses. Mr. Kane asked what is the timeline for the regulations to be ready for use? What is the notification time for advertising?

Mr. Berube replied two (2) weeks of advertising. I will try to have a draft of the regulations for the Board to review and adopt at the October 1, 2012 Board of Health meeting.

Mrs. O'Rourke thanked Chief Rosa and Sargent Mirasolo for their presentation.

Proposed 2013 Board of Health Meeting Schedule

Mrs. O'Rourke stated the last item under Board of Health Business is the proposed 2013 Board of Health Meeting Calendar.

Mr. Berube requested that the Board Members review the 2013 draft meeting schedule and if there are any issues please contact the Board of Health office. If there are no issues the calendar will be finalized at the next meeting.

Mrs. Giroux asked if the meeting time could be changed to 7:30 p.m.

Mrs. O'Rourke replied that she will take it into consideration.

7:15 p.m. Richard Burttt – 8 Thoreau Street – Continued Hearing for Variance request for work within the Flood Plain

Mrs. O'Rourke stated the next item on the agenda is Richard Burttt, 8 Thoreau Street continued hearing for a variance request for work within the Flood Plain.

Robert Gill provided the Board with a large scale drawing of the proposed project at 8 Thoreau Street.

Robert Gill, Registered Civil Engineer and Land Surveyor, identified himself. Mr. Gill explained that this is a continued hearing from the August 6, 2012 Board of Health meeting. On August 15, 2012 Oxbow Associates presented a Notice of Intent to the Conservation Commission. Mr. Gill pointed to the plans and explained all the areas of concern. Mr. Gill pointed to the area where some of the trees would be cut down and the Conservation Commission wanted new trees planted. The trees will be replaced with oak trees. They want a visual barrier so that the fifty (50) foot no buffer zone could be seen. Six (6) blueberry bushes will be planted in that area. There is a concern regarding the debris around the shed. The Board is concerned with the jurisdiction of the shed. The shed is beyond the parameter of the filing of the lot of the Notice of Intent. Mr. Burttt would like to keep the shed. Mr. Burttt has agreed to side the shed and clean up the debris around it. This has not been agreed upon with the Conservation Commission. They did not want to issue an Order of Conditions until the Board of Health has given approval. Mr. Burttt wants to add fill around the front of the building near the steps. Mr. Gill explained that the basement floor elevation will be at 119 and the first floor elevation will be at 127.5 so that should not be a problem. We are well within the flood storage. All the concerns of the Board have been addressed. Mr. Gill stated that he will address any questions the Board may have.

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

Mr. Berube explained that in the Board's package are some pictures that were taken by Mr. Burttt and myself. The pictures that I have taken of the shed show that the shed is leaning over to one side. I don't know how safe the shed is. If Mr. Burttt intends to keep the shed I want something in writing from

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the Building Commissioner stating that it is a safe structure. I was going to suggest to the Board that we request that the shed be taken down because of a safety issue.

Mrs. O'Rourke asked Mr. Burttt why he wants to keep the shed.

Mr. Burttt replied that if he takes the shed down I will not be able to construct anything else. I want to use the shed as storage for a lawn mower. It need to be jacked up on one side and cinder blocks need to be put underneath it.

Mrs. O'Rourke asked has the building inspector looked at the structure.

Mr. Burttt replied no. The shed is not on the lot in question. The shed is on a separate lot that I own.

Mr. Berube explained that the shed falls within a paper street. Mr. Burttt by right has use of half of that street. Technically he owns the rights to the paper street.

Mr. Gill explained and pointed to a section of the lot where the town has extended the lot line. If you tear down the structure you are within a sensitive area and it would cause more disruption to tear it down rather than to fix it. It is up to the Board to make that decision.

Mr. Berube explained that he spoke with the Conservation Commission and they seem to be leaning towards wanting the shed removed. If the Board is willing to leave the structure standing and if you want to keep it I want something from the Building Commissioner stating that the structure is safe or you will do the necessary repairs so that it will be safe.

Mr. Gill asked is there any way the Board can make a decision targeting that as a concern in an area that is outside of the proposed project. Then the Board of Health can go along with the Building Department and the Conservation Commission decision.

Mr. Berube replied that maybe it can be a condition as either or. If the structure is deemed an unsafe structure then it would have to be repaired or made safe or torn down.

Mrs. O'Rourke asked Mr. Kane if he still had a concern about the elevation of the basement floor.

Mr. Kane replied yes. Do you know what the level of the water table is? This is new construction. The existing house is being torn down and you are starting from scratch. You are not using the existing footprint or the existing foundation. This project needs to be reviewed as new construction that has to be subject to all our existing regulations and one of them is the offset between the basement floor and the water table. Do you know what the water table is at this time?

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Mr. Gill replied that the water table is three (3) feet down in the area of the proposed garage so the basement floor is about three (3) feet above the water table. Mr. Burt has lived there for thirty-four (34) years and the water has never come up that high. As an engineer we have to use the criteria that we are given so we set it at elevation 119. The basement floor has to be two (2) feet above the water table.

Mr. Kane commented that is one of the reasons for the continuance of this hearing. At the last meeting you did not have that information. It is hard to approve a project without knowing the basement floor elevation and if you are in compliance. The existing foundation has a crawl space.

Mr. Gill stated there are cinder blocks on the outside with concrete all around it.

Mr. Burt explained that it is a solid cinder block foundation around the house and then it is stucco on the outside of the cinder blocks. On the inside there are three (3) walls of cinder blocks that act as footings.

Mr. Gill explained that before the photographs were taken Mr. Burt dug around the outside of the house to show that there were cinder blocks around the dwelling.

Mr. Kane stated that his questions have been answered.

Mrs. Giroux stated she is concerned because at first you stated that you were using the same footprint but you are not using the same footprint.

Mr. Burt explained that we moved the house forward to cause less of an impact to the flood plain.

Mr. Gill explained that the area of the prior footprint and the area of the new footprint do not overlap exactly. We moved the house forward to get the minimum setback from the street which will be twenty-two (22) feet.

Mrs. Giroux asked are you adding two hundred twenty (220) square feet.

Mr. Gill replied yes.

Mrs. Giroux stated that she is not comfortable with the shed.

Mr. Gill replied that seems to be the consensus of the Board. That is something that Richard Burt has to work out with the Conservation Commission and the Building Department to make sure that it is safe.

Mr. Kane commented that he is surprised that the town has not done anything about the shed because it is partially on town property.

Mr. Gill stated that it has been so many years that the town probably does not even know that the shed is partially on town property.

Mrs. Giroux asked if flood vents will be installed in the dwelling.

Mr. Gill replied flood vents will be installed in the garage.

Mrs. Giroux stated that she was referring to flood vents in the main house.

Mr. Gill replied no, the house will be at elevation 119.

Mr. Berube explained that he spoke with the Building Commissioner, Mark LaLumiere, and flood vents are required in the house as well because it will be constructed in a flood zone. So flood vents will have to be installed in the house.

Mr. Reader asked Mr. Burtt if he was going to live in the proposed house.

Mr. Burtt replied yes.

Mrs. O'Rourke asked if anyone in the audience had any questions or concerns.

Two residents were in the audience but had no concerns.

Mr. Berube explained that with the addition of the flood vents to the main house and the proposal to provide flood compensation the proposed dwelling is fine. The Board has to make a decision on the shed. The Board needs something from the Building Commissioner stating that the shed is safe or can be made safe or it needs to be torn down. The shed has to be addressed in some way.

Mr. Reader made a motion to grant a variance of the Board of Health Rules and Regulations, Chapter 5, Section 5.5.005 (1) to raze the existing single family dwelling and construct a new single family dwelling in the Flood Plain at 8 Thoreau Street and the concerns of the shed need to be addressed by the Conservation Commission and the Building Commissioner based upon the following facts 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 Billerica Health's Rules and Regulations, Chapter 5, Section 5.5.005 (1).
- 2) The applicant proposes to raze an existing single family dwelling located in the Flood Plain in order to construct a new single family dwelling with an attached garage and deck largely within the footprint of the existing dwelling. A small amount of grading is proposed to provide compensatory flood storage. The proposed dwelling will be serviced by town sewer and water.

- 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, 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 Robert M. Gill, Engineering & Surveying, dated June 27, 2012 and revised to August 31, 2012 and stamped by Robert M. Gill RPE#24181, RLS#29867.
- 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.
- C) The lowest floor (i.e. the basement floor) of the proposed dwelling shall be constructed at or above elevation 119 NGVD 29. The garage floor shall be constructed at or above elevation 118 NGVD 29.
- D) Flood vents shall be installed in the proposed dwelling and attached garage to allow for the entry and exit of flood waters and shall comply with the National Flood Insurance Program (NFIP) and the State Building Code standards for construction in the flood plain.
- E) The existing shed shall be demolished and removed from the site unless the structure is deemed to be safe by the Building Commissioner or can be brought into compliance with the standards of the State Building Code. Written documentation of the Building Commissioner's determination regarding the structural integrity of the shed shall be submitted to the Board of Health.

Mrs. Giroux seconded. So voted unanimously.

7:25 p.m. Via Dell Amore, Inc. – 749 Boston Road – Continued Hearing for Variance request for work within the Flood Plain

Mrs. O'Rourke stated the last hearing on the agenda is Via Dell Amore, Inc., 749 Boston Road, continued hearing for a variance request for work within the Flood Plain.

Attorney Stephen Lentine, 409 Boston Road, Billerica representing S.T.H. Realty Trust and Via Dell Amore Restaurant, Inc. who will be the tenants at 749 Boston Road, identified himself. We requested this hearing regarding the alterations being made to the structure at 749 Boston Road. On July

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2, 2012, we were present at the Board of Health meeting as a result of a petition that was filed in May 2012 with regards to some interior renovations that the applicant wants to do to the restaurant. Attorney Lentine stated that he would give a brief summary of the events that have taken place. The Department of Revenue seized the assets of Angelina's Restaurant because of non-payment of taxes and placed a tax lien on the establishment. The Turco family owned the real estate and purchased the equipment from the Department of Revenue and proposed to open a new restaurant under their new corporation's name (Via Dell Amore Restaurant). A Special Permit was granted by the Zoning Board of Appeal over a year ago. We applied for a common victualler's license and when I approached Richard Berube, Director of Public Health for a signature he informed me that we needed a variance. I filed for a variance and submitted a flood mitigation memo. At the Board of Health meeting on July 2, 2012 the Board suggested that we meet with Richard Berube, Gary Courtemanche, Matt Hamor, Hancock Associates, Tory Turco and myself on site to determine if there was any compensatory area on site where you could mitigate the flood plain. All work that is being done is interior work. We met on site in August and Richard Berube made some suggestions. We incorporated most of Richard Berube's suggestion into an Operation and Maintenance Manual which was submitted to the Board in August 2012. The Operation and Maintenance Manual explains how to handle Normal Operations, Non-Flood Emergencies and Flood Related Emergencies. There will be a generator on site of sufficient capacity to run emergency lighting and the refrigeration system for short term power outages. The owner shall maintain a current contract agreement with a mobile refrigeration service company to facilitate the removal of all perishable food and beverage materials when needed in preparation for a flood event or a long term power outage. Different activities are triggered when the flood stage reaches different elevations. Attorney Lentine explained what would be done when the flood elevation levels reach 93, 94 and 95. At level 95 the establishment is shutdown and can not reopen until the Board of Health certifies that it is fit to reopen. A new bolted down grease trap and a new sewer manhole will be installed. The dumpster enclosure shall be regularly emptied, cleaned and secured. We have done everything that is economically and reasonably feasible for an existing structure. The Operation and Maintenance Plan has been approved by Richard Berube, Director of Public Health. Mr. Berube requested one additional thing that we agreed to do and that was to install an elevation pole on the site so that everybody can see when the flood plain reaches the levels that we are concerned with. The elevation pole will have markings at elevations 93, 94 and 95 and everybody knows that this is triggering certain actions that need to be taken according to the Operation and Maintenance Plan.

Mrs. O'Rourke asked who came up with this Operation and Maintenance Plan.

Attorney Lentine replied a lot of suggestions were made when Richard Berube and Health Agent, Gary Courtemanche met with us at the site. Matt Hamor put the bulk of the plan together. Tory and I tweaked it using the suggestions that were largely made by Richard Berube which are incorporated into the plan by Matt.

Mrs. O'Rourke complimented Mr. Berube on a very good job.

Mr. Berube stated that he gives the applicant a lot of credit. This plan goes above and beyond what any other establishment has in town. The plan is very proactive. As Attorney Lentine stated we

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discussed many ways that flood mitigation could be done however with the existing structure that is there we could not come up with a feasible solution that would really work and be cost effective. We decided that this would be the best approach.

Mrs. O'Rourke stated that she was impressed with the fact that different things will be done at elevations 93, 94 and 95.

Mr. Reader commented good job by everybody.

Mrs. O'Rourke asked Mr. Berube if he had any comments to add.

Mr. Berube stated that this is a good plan. Mr. Berube explained that he received a call from Pat Flemming, who could not be present tonight. Ms. Flemming's major concern is the material storage on the site in the event of flooding. Ms. Flemming is concerned that the flooding will cause damage to her property and other properties in the area. That is addressed in this plan. I think they have addressed all the issues in the Operation and Maintenance Plan.

Mrs. O'Rourke asked has the stuff such as siding that has been stored in the backyard been removed or do you plan on using it.

Mr. Turco replied that most of the material has been removed or put away. It is wide open and very clean.

Mr. Berube explained that he has visited the site on several occasions and Mr. Turco has cleaned up the site and removed most of the material. If the Board approves the variance, the Board of Health will inspect the site before the restaurant is open to make sure that everything is removed or secured.

Mr. Grady congratulated them on the Operation and Maintenance Plan. Mr. Grady asked what the elevation of the generator is going to be.

Mr. Hamor explained that the generator will be brought into the building when the flooding event begins.

Mr. Kane commented that it states the generator will be maintained on site.

Attorney Lentine explained that it will not be bolted down it will be brought in. The generator will be portable. The generator is for a short term situation not a long term solution.

Mr. Hamor explained that a relay will be installed to power those primary components so that when the generator is plugged in it will be handling the entire restaurant or at a minimum those two components.

Mr. Grady explained that you have to make sure that the generator is maintained and ready to go.

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Mr. Hamor replied that he spoke to Mr. Turco about the history of other flood occurrences and he will be there the entire time to take care of the situation.

Mr. Kane asked why is item #6 regarding the merchandise display yard being regularly cleaned and the fence secured included in the Operation and Maintenance Plan.

Attorney Lentine explained because the plan is for the entire site.

Mr. Kane stated that works as part of the operation plan for the building and the facility but what does that have to do with the restaurant itself. How does that fit into the coverage for the restaurant?

Attorney Lentine explained we did a plan that incorporates the entire site. We are seeking a variance for the site. It is within Richard's purview to request a plan for the entire site.

Mr. Hamor explained that Mr. Turco is securing and cleaning everything for the entire site and preparing for the mobility in and out of the site incase of a flood event.

Mrs. Giroux asked where the elevation pole will be located.

Mr. Hamor replied we think we are going to put it next to an existing fence corner and strap it to the existing fence. You will not see it from the road. It will be visible from the main office window.

Mrs. Giroux asked how often the Operation and Maintenance Plan will be reviewed.

Mr. Hamor replied the plan does not need to be updated. The facility is required to submit the contracts that are for the refrigeration removal. That contract is going to be continuously updated. Many of the items in this plan are common sense items. If the flood plain changes then maybe the plan needs to change.

Mr. Berube stated the real test will be after the first flood event occurs.

Mr. Kane asked can the plan be brought back for review after a real event occurs.

Attorney Lentine replied that you can add a condition in the Board's decision that the plan be reviewed from time to time or if the Board finds that after the first flood event something needs to be updated, changed or included a review can be required.

Mr. Hamor explained when a flood event occurred on Mother's Day, Mr. Turco went through some of these items to make sure the plan worked.

Mrs. Giroux made a motion to grant a variance of the Board of Health Rules and Regulations, Chapter 5, Section 5.5.005 (1) in order to alter an existing building for a new food service establishment

in the Flood Plain at Via Dell Amore, 749 Boston Road 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 Board of Health's Rules and Regulations, Chapter 5, Section 5.5.005 (1).
- 2) The applicant proposes to renovate a portion of an existing building for a new food service establishment. The space was previously occupied by a defunct food service establishment (Angelina's). The property falls within the Flood Plain and the existing buildings and structures on the site are flood prone.
- 3) The applicant made a good faith effort to explore various methods of retrofitting the existing structure to reduce or eliminate the impact of flooding. However, it was determined that flood proofing the building was not feasible due to the physical conditions of the structure and site and complying with all regulatory requirements.
- 4) The applicant proposed an Operation and Maintenance Plan to minimize the potential impact of a flood event to the proposed food service establishment as an alternative to flood proofing the building.
- 5) The applicant has acknowledged that the structure is located in a flood plain and accepts responsibility for any flooding that may occur. It has also been expressed, that in the event of a flood the establishment must close until flood waters recede and approval is granted by the Board of Health to re-open.
- 6) The applicant is still required to obtain approval of all plans pursuant to the Massachusetts State Sanitary Code 105CMR590.000. This variance being acted upon by the Board of Health is strictly a variance of local regulations.
- 7) The Board of Health has determined that the actions proposed by the applicant are adequate measures to protect the public health and environment and complies with the intent of Board of Health Rules and Regulations. Further, approval of the applicant's request will not be detrimental to the public health and environment.

CONDITIONS

Standard conditions number 1, 2, 3, 4, 5, 6, 9, 10, 11, 12, 13, 14, 15, 19, 25 and 29 in accordance with the Board of Health regulations and Special Conditions:

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- A) All construction must be in accordance with plans submitted for review and approval, prepared by Hanacock Associates, dated October 3, 2011 and revised to May 3, 2012 and stamped by Joseph D. Peznola, RPE# 38117.
- B) The applicant is required to fully comply with the Massachusetts State Sanitary Code 105CMR590.000 and all applicable Board of Health regulations and other town laws. In particular, plans for the twenty-four (24) seat restaurant must be approved by the Board of Health prior to beginning any renovations to the building space.
- C) The proposed exterior grease trap must be installed in accordance with the approval letter dated December 12, 2011 issued by the Board of Health prior to the opening of the proposed food service establishment.
- D) Improvements to the dumpster area must be completed in accordance with plans approved by the Board of Health prior to the opening of the proposed food service establishment.
- E) It shall be the responsibility of the owner/management of the proposed food service establishment (FSE) to properly implement the "Operation and Maintenance Plan for Normal Operations, Non-Flood Emergencies and Flood Related Emergencies". The FSE staff shall sign an acknowledgement that they have read and understand the plan. Said acknowledgements shall be kept as part of the records for the FSE and made available for inspection upon request by the Board of Health.
- F) The "Operation and Maintenance Plan" shall be updated whenever deemed necessary by the Board of Health. Updated plans must be submitted for review and approval by the Board of Health.
- G) An elevation pole shall be installed in a conspicuous place on the site as part of the "Operation and Maintenance Plan".

Mr. Reader seconded. So voted unanimously.

Open Microphone

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

No one was present for open microphone.

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

The Board adjourned at 8:10 p.m.

Respectfully submitted,

Sandra Giroux
Secretary

Joanne M. White
Recording Clerk