

BOARD OF HEALTH MINUTES
November 5, 2012

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

ACCEPTANCE OF MINUTES

Mr. Reader made a motion to accept the Meeting Minutes of October 1, 2012. Mr. Kane seconded. Three voted in favor, one vote abstained (Mike Grady).

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 October 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 the turnout at the Town Flu Clinics was about the same as in the past couple of years. Christine continues with her routine vaccinations and communicable disease reporting/follow up. Christine has included in the Board's package the most recent information on the Multistate Fungal Meningitis outbreak that has been on the news.

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

**BOARD OF HEALTH MINUTES
NOVEMBER 5, 2012 PAGE 2**

The Board Members did not have any questions.

Mr. Berube stated the next report is from Health Agent, Phavy Pheng. Mr. Berube stated that Phavy attended the Massachusetts Health Officers Association Conference (MHOA) in Springfield on Thursday, October 25, 2012. Phavy attended five courses related to Title 5 and Food Protection.

Mrs. O'Rourke stated that she did not think that the Board of Health permitted and inspected nail salons.

Mr. Berube replied that nail salons do not fall under the Board of Health's jurisdiction however a resident came to the office and explained that she complained to the State about a nail salon and they did not respond. I explained to her that although we do not permit nail salons I would look into the situation.

Mrs. O'Rourke asked what happened.

Mr. Berube explained that we are still gathering information from the State. However, the Board of Health will inspect the nail salon to see if there is anything that falls within our jurisdiction that could cause a public health nuisance.

Mr. Reader commented that there has been a great improvement regarding the noise and odor complaints from Empire Recycling located at 36 Sterling Road. There has been only one complaint since the last report.

Mr. Berube replied that there is only one person that is complaining.

Mrs. O'Rourke asked what was the result of the court case at 78 Pinedale Avenue.

Mr. Berube explained that Todd Mitchell has until November 26, 2012 to provide us with a plan. Dresser, Williams & Way is in the process of designing the plan and it will be completed in the next couple of weeks. Then the plan needs to be submitted to the Board of Health and the Department of Public Works for approval. The Board of Health is in the process of locating the other parties in the probate court matter. The order that was issued to Mr. Mitchell will also be issued to the other parties. If this problem is not taken care of they will have to move out of the house.

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

The Board Members did not have any questions.

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

Mr. Grady asked what the operator's reaction was when you walked into Expresso Pizza and the door was propped open.

Mr. Courtemanche replied that the owner was present and he apologized.

Mr. Grady asked what is the next step if the door is propped open again.

Mr. Courtemanche explained that the next time there would be a five hundred (500) dollar fine or an enforcement conference with the possibility of their permit being suspended.

Mr. Kane asked Mr. Courtemanche if he explained that clearly to the owner.

Mr. Courtemanche replied yes.

Mr. Grady asked has the fine been paid.

Mr. Courtemanche replied that the fine was paid immediately.

Mr. Berube explained that there is an addendum to Gary's report explaining the establishments that were closed during Hurricane Sandy. Gary checked out all the food establishments to make sure they were in compliance with the proper procedure for a power outage.

Mrs. O'Rourke asked about the Augusta Subs Mobile Food Truck.

Mr. Courtemanche explained that the owners of Augusta Subs had a modern refrigerated truck built to sell chicken. It is called Chicken On the Run. Rich and I inspected the truck. The chicken is broasted in the truck and then put on salad or sold separately. The truck is located at the Chelmsford Forum at lunch time and then at the Restore Building on Boston Road.

Mr. Reader commented that the mobile truck was parked in front of Augusta Market when the power was out.

Mr. Courtemanche replied that they used their generator to cook when the power was out.

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

Mr. Kane asked was there any challenges or push back from the food establishments that lost power.

Mr. Courtemanche replied that all the establishments were very cooperative compared to the last time there was a power outage.

Mrs. O'Rourke asked if the Market Baskets lost a lot of food.

Mr. Courtemanche replied that the Market Basket stores were prepared. They have a good disaster plan in place for power outages. Within hours they had refrigeration trucks on site. They only

loss they had was ice cream. Only two (2) Market Baskets in Billerica lost power.

Reappointment to the Substance Abuse Prevention Committee

Mrs. O'Rourke stated the next item on the agenda is the Reappointment to the Substance Abuse Prevention Committee.

Mr. Berube explained that Helen Devlin and Tracy Shaw have requested to be reappointed as the Board of Health's Representatives to the Substance Abuse Prevention Committee. Helen and Tracy are present to talk about what is currently going on, the future plans of the committee and why they are requesting to be reappointed.

Helen Devlin identified herself. Ms. Devlin explained that the committee membership has increased. A representative from Lowell House has spoken with the teachers at the middle schools on how to recognize signs of students using substances. Lowell House has an excellent treatment program. The focus is on middle school students.

Tracy Shaw identified herself. Ms. Shaw explained that the committee received funding from Fall Town Meeting for new substance abuse programs. We are looking to implement a program in the middle schools called Smart Choices. The program provides information on how to conduct an assembly and how to work with the teachers to schedule classes for students with substance abuse problems. This program is currently being used in Tewksbury.

Ms. Devlin explained that in May 2013 there will be a Town Forum for all parents as well as students. There will be a guest speaker available for parents to ask questions. The focus is on middle school students. The surveys that have been done in the past indicate that a significant number of young people begin their substance abuse in middle school. Our goal is to get help in the middle schools. We are trying to have our own catch phrase. We are looking at the programs that Lowell and Tewksbury have used to increase awareness. Unfortunately, parents say not my children, not in my town. We are both very active on the committee. We have a very good relationship with our leader Dede Galdston. Ms. Devlin asked the Board Members if they had any questions.

The Board Members did not have any questions.

Mr. Berube stated that Helen Devlin and Tracy Shaw have done a great job in representing the Board of Health on the Substance Abuse Prevention Committee so I recommend that the Board reappoint them.

Mr. Kane made a motion to reappoint Helen Devlin and Tracy Shaw as the Board of Health Representatives to the Substance Abuse Prevention Committee.

Mr. Grady seconded. So voted unanimously.

Water Conservation Committee Update

Mrs. O'Rourke stated the last item under Board of Health Business is the Water Conservation Committee Update.

Mr. Kane explained that the Water Conservation By-Law passed at 2012 Fall Town Meeting. We are working on our next project.

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

The Board Members did not have any questions.

Mr. Berube explained that he attended a Stormwater Management Workshop with Gary Courtemanche and the Department of Public Works (DPW) Director in Franklin stated that if you want to improve water conservation, raise the water rates. The Director explained that he has all the documentation that proves that if the water rates are raised conservation improves.

7:15 p.m. OM Temple – Boston Road – Request Amendment to the Order of Conditions

Mrs. O'Rourke stated the next item on the agenda is the OM Temple, Boston Road, requesting amendment to the Order of Conditions.

Attorney Adam Brodsky, representing the OM Temple, Inc., Boston Road identified himself. Attorney Brodsky stated that we are requesting that the Board please amend the variance that was granted on July 2, 2012. We are requesting that Condition #33 be eliminated and Condition #34 be modified. We have been working with Town Counsel, Attorney Patrick Costello to come up with appropriate language for Condition #34. Condition #33 is the ***acknowledgement regarding noise and odor potentials***. We are suggesting that Condition #33 is not appropriate for a variance relating to stormwater management. We are asking that Condition #34 be amended to read that ***the use of the building is restricted to an interreligious/cultural center and temple and related uses. The building shall not be used for residential purposes***. We are requesting that the language relating to a deed restriction in Condition #34 be eliminated. The use of this property falls under the Zoning Board. I have discussed this language with Attorney Costello and it appears to be satisfactory to him. Those are the only two changes. We were trying to work out these conditions but we ran into the deadline for filing an appeal of the variance so we filed an appeal as a place holder. Hopefully we can work out the issues and dismiss the appeal.

Mr. Berube asked Town Counsel, Patrick Costello for his comments on the negotiation of the proposed settlement.

Attorney Patrick Costello, Town Counsel for the Town of Billerica identified himself. Attorney Costello explained that the litigation has commenced regarding this matter under Massachusetts General Laws, Chapter 249 seeking a judicial review of the appropriateness of those two (2) conditions. The

appeal filed under Chapter 249, Section 4 certiorari review requires that we assemble the records of the proceedings and file with the court within ninety (90) days. When I spoke with Attorney Brodsky relative to the specific issues it appeared that we may be able to work out a reasonable accommodation of those issues which would not adversely impact the interest of the Town or the Board. The issue with Condition #33 relative to an ***acknowledgement regarding noise and odor potentials*** from the adjacent Department of Public Works (DPW) facility that appears to be language from the initial variance that was granted by the Board. That is the type of condition that would be most beneficial or have the most protection from the Board's perspective with regards to residential use. There are other residential properties in Billerica that are located next to commercial or industrial properties and there have been numerous issues. I do believe that given the particular use that is proposed with this property, which is limited. The likely hood of Condition #34 regarding the adverse claim emanating from the DPW use of the property would be very small if any at all. I don't believe that a modification of the variance by the elimination of Condition #33 would have any negative impact on the Town. The Town owns the property next door and it is currently being utilized for a particular use. I would suggest that the developer or the purchaser of the adjacent property buy that property with full knowledge of the activity that is going on next door and the potential liability or injury interest of the Town. Modifying the variance decision of Condition #33 would be minimal. Attorney Brodsky requested that we eliminate Condition #34 in its entirety. I did not think that was appropriate action for the Town to take. They wanted to redefine the use of the property from strictly a temple to a religious/interreligious/cultural center. They did agree to incorporate language that the building would not be used for residential purposes. This property cannot be used for residential purposes under the variance that has been granted by this Board. If the applicant wanted to change the use of this property for residential purposes they would have to come back before this Board to seek an amendment to the variance decision at another public hearing. With the revised language that is being proposed the Board is trying to avoid this property being used for residential purposes. Attorney Costello explained that he did not see any major impact with the applicant's request that the language relative to the deed restriction be eliminated from the decision. This decision will be recorded at the Registry of Deeds as well as any modification or amendment to the decision. This variance will be a public record. I do not believe that there will be any detriment or harm in the interest of the Board with regard to the other thirty-five (35) conditions. I suggest that the Board consider that this may be a reasonable accommodation to avoid litigation and allow this matter to go forward without any great compromise of the Board's interest.

Mrs. O'Rourke stated the language that they are proposing that ***the use of the building is restricted to an interreligious/ cultural center and temple and related uses***, isn't that the same as religious use.

Attorney Costello replied pretty much. It is more appropriately designed to what the facility is used for. The Board does not want this property used for residential purposes under the terms and conditions of the variance. That restriction will remain in the document as a condition.

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

**BOARD OF HEALTH MINUTES
NOVEMBER 5, 2012 PAGE 7**

Mr. Berube explained that he has spoken to Town Counsel and he does not have any objection to eliminating Condition #33. As for the revised language in Condition #34 it still meets the intent of the Board's decision. I feel that if this goes to litigation it will probably be remanded back to the Board. I don't think there will be any harm in granting the changes.

Mrs. O'Rourke stated that the use is still the same.

Mr. Berube replied yes. Mr. Berube reiterated that it will not be used for residential purposes and as Town Counsel stated if they want to make any changes they have to come back before this Board at another hearing. I recommend that the Board grant their request.

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

Mr. Kane stated that the variance is for work within the flood plain and stormwater management. Mr. Kane stated that he did not understand if the applicant decides to change the use of the property or sell the property why would they come back before the Board because the variance has been completed and the building has been constructed.

Mr. Costello explained that in order to modify any change or make a modification to a condition that is granted by the Board in a variance decision the applicant has to come back before the Board for a public hearing. There is some concern about the use of this property for the stormwater criteria that is being applied. The issue that you are raising is a legal issue as to whether or not it would be enforceable. That is something that would not have to be addressed until a later date.

Mr. Kane asked why does the applicant want to remove the deed restriction. Certain deed restrictions can be changed like a variance can be changed. It is an unbuildable lot. The Board would not have granted the variance if this was going to be used as a gas station or a convenient store or any other business or for residential use. The only reason the Board approved the variance was because the temple was going to be used for religious use. Their original request was to construct a religious temple in the flood plain. After the variance was approved the applicant requested a change in their language. The language in the condition was what they had requested on the original application.

Attorney Brodsky explained we requested and specified the use which has just been defined as a large interreligious cultural educational center. It is a Hindu Temple but we also reach out to other religious communities. We are just trying to be consistent. We agreed that there would be no residential use because that relates to fire protection. We have no intention of selling this property. If the property was ever sold that information would be available to a new buyer. The new buyer would have to comply with all the special conditions of the various use of the building. We will never use the building for residential use.

Mr. Kane asked will you use the building for commercial use.

BOARD OF HEALTH MINUTES
NOVEMBER 5, 2012 PAGE 8

Attorney Brodsky replied not based on the language that we agreed to with Town Counsel. It will be used for an interreligious/cultural center and temple and related uses to that. The hall can be used for family functions. I don't recall what the zoning requirements are. We cannot use the property for commercial or industrial use.

Tej Tanden, Executive Board of OM Temple, Inc. identified himself. Mr. Tanden explained that we rent the space for religious activities. We don't want any confusion.

Mrs. O'Rourke stated that is still considered religious use.

Mr. Tanden explained that sometimes the preacher performs the ceremony and stays overnight because the ceremony goes on all night and the preacher has nowhere to go. I do not want anyone to misunderstand.

Mrs. O'Rourke explained that the reason the variance was granted because the temple was going to be for religious purposes and the Board could not deny that. I don't understand why the language has to be changed.

Mr. Kane stated this request came before the Board for work within the flood plain and a stormwater management variance. Once the variance is approved, the Board still has the responsibility to address other concerns that fall under the Board of Health's authority such as noise and odor complaints. Condition #33 relates to the DPW yard next door which is beyond the scope of the stormwater management plan and flood plain issue. As part of our scope the Town activities do not fall under the Town By-Law for noise. I am curious as to why they want Condition #33 removed. It does not have any significant weight. If there is a religious ceremony going on and there is a dump truck in the DPW yard making noise that is something that the current owner should be aware of before investing more money in construction. Any future potential owner should be aware of this situation. It should not be on line 37 of the variance. It should be part of the deed restriction so that the purchaser is aware of the situation when purchasing property that is next to a known potential noise and odor producer that falls outside of the Town By-Laws for noise. I am not sure why the applicant is so concerned about having that as a deed restriction when it is just an acknowledgement of an existing condition. I am questioning why the applicant wants that removed from the variance.

Attorney Brodsky replied that in the private sector you would never get a potential buyer to acknowledge and purchase a property where there may be a potential nuisance condition next door. This Board has a special role to play because you are representatives of the Town. The Town is asking my clients to acknowledge that there could be a nuisance condition next door. The Town can't ask that. If there are nuisance conditions that require my clients take some action then they will pursue their legal remedies. I think it is unfair of the Town to ask anyone to do that.

Mr. Kane replied that this Board represents the 40,000 citizens in Billerica rather than the Town Government or Selectmen or the governmental body. As members of our community our intent is to

protect our residents and members of the temple who purchased the property or future residents that may purchase the property.

Attorney Brodsky replied that from our perspective it is an attempt of the Town to protect itself from many complaints. My clients are tax payers in the Town. We respectfully disagree. If there are problems in the future the parties will have to resolve them in some other forum but don't ask us to give up our rights now for something that may or may not happen in the future.

Mr. Kane asked what changed between now and April 2005.

Attorney Brodsky replied that he could not answer that question because he was not representing OM Temple at that time.

Mr. Kane explained that in April 2005 the acknowledgement was part of the variance that was acknowledged and signed off at that time.

Attorney Brodsky replied that he has been working with OM Temple for four (4) years to obtain the necessary permits for a much better project than what was originally produced. It is in our judgment that these two (2) conditions are problematic and beyond the Board's jurisdiction. We have come forward with a negotiating settlement of that dispute which requires that we give something and we are asking the Board to give something in return. If the Board chooses not to I will consult with my clients and will have someone else decide the issue if necessary. We are very thankful that Attorney Costello has spent the time to work with me on this to try to come up with a solution that will be mutually agreeable.

Attorney Costello asked when was a prior acknowledgement signed.

Mrs. O'Rourke replied in April 2005.

Attorney Costello explained to the Board that he asked Attorney Brodsky if his client would be willing to sign the acknowledgement if the Board agrees to eliminate the Condition #33 and keep the document on file but not as a condition in the variance.

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

The Board Members did not have any further questions.

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

Mr. Berube stated that eliminating Condition#33 does not appear to be a major problem. I think the Board should grant the request and eliminate Condition #33 and amend Condition #34.

Attorney Costello stated that this matter is in litigation and he does not want to discuss the merits or the argument. Attorney Costello explained that he would summarize the applicant's argument. These two (2) conditions are outside the scope of the specific criteria that the Board has drafted in the variance. The legal standard is if the condition is arbitrary and capricious or outside the scope of the authority of the Board, it is suspect and would be subject to challenge. I suggest that the Board may want to keep in mind what the real impacts of these conditions would be. I don't think that the use of the property is much different than what was originally proposed. There are many religious properties within the Town where cultural and educational events take place. When I discussed this matter with the counsel for the applicant he explained that they just want clarification of the point. I do believe that because the religious activities are cultural aspects of Hinduism they have a legitimate concern. I do not think that the restriction and use is much different than the language in the original variance. They did agree to leave in the language about it will not be used for residential use. That was primary in the Board's mind. From this Board's perspective you have limited authority and jurisdiction over this matter. Some uses may cause you to react differently to an application. This variance and the amended language should it be approved by the Board will then be recorded at the Registry of Deeds. The variance will be a matter of record that would encumber the property not restrict its use. If the temple was to be used for residential use then it would have to come back before the Board. I don't believe there would be a great negative impact on the Town or the citizens of the Town. It is the Board's call to make that decision.

Mr. Berube stated that it is the Board's call and I would rather it be the Board's call and not leave it in the hands of a judge.

Mr. Kane asked what the impact would be if the building was not used for residential or commercial purposes.

Attorney Costello replied since they were so specific in detailing the use of how they were going to use this property if they were to convert this property to commercial or industrial use the Board would have a compelling argument. They would have to come before the Board again.

Mr. Berube explained that if the applicant tried to use the property for commercial or industrial use they would also have to go before the Planning Board.

Mr. Reader made a motion to eliminate Condition #33 and revise Condition #34 to read that ***the use of the building is restricted to an interreligious/cultural center and temple and related uses. The building shall not be used for residential purposes and the deed restriction be removed*** for OM Temple, Inc. to be located at 240 Boston Road.

Mr. Grady seconded. Two voted in favor (Robert Reader and Mike Grady) and two opposed (Daniel Kane and Marie O'Rourke). The motion did not pass.

Mr. Reader asked what the next step is.

Attorney Costello stated that we will be in court defending the litigation. Attorney Costello

explained that he would file the administrative record with the court by December 10, 2012. Then each party will file a motion for judgment on the pleadings. The court will make a decision as to whether or not these conditions are arbitrary and capricious or outside the scope of the Board's authority. That is the standard.

Mr. Reader asked what will happen after that.

Attorney Costello explained that the court could remand it back to the Board or the court could just eliminate both conditions all together or both.

7:25 p.m. Ava Estates formerly Arakelian Farms – 84-90 Rangeway Road – Request a Variance to the Design Flow Requirements for the Sewage Disposal System

Mrs. O'Rourke stated the next item on the agenda is Ava Estates, 84-90 Rangeway Road, requesting a variance to the design flow requirements for the sewage disposal system.

Attorney Karla Page, on behalf of Value Homes, LLC, identified herself. Arakelian Family Trust currently owns the property at 84-90 Rangeway Road. That property was formerly known as Arakelian Farms. The applicant is seeking a variance from the Board of Health Rules and Regulations, Chapter 5, Section 5.3.007. The proposal is to construct a twenty-six unit townhouse project on this property. The variance is relative to the septic system that will be on the property. The septic system that has been designed and approved for this project will accept a flow of two hundred twenty (220) gallons per day for each dwelling unit. This is a deviation from the minimum flow. Under the Board of Health regulations the minimum flow is four hundred forty (440) gallons per day which would be for a four (4) bedroom unit or with a deed restriction three hundred thirty (330) gallons per day for a three (3) bedroom unit. We are seeking a variance for two hundred twenty (220) gallons per day because the twenty-six (26) townhouse units that will be constructed on the property will all be two (2) bedroom units. The septic system that has been approved is for fifty-two (52) bedrooms. We are requesting that this variance be approved.

Mr. Berube explained that this property was previously known as Arakelian Farms. When the Board approved this project this particular issue wasn't addressed at that time. The septic system that is designed is similar to Swanson Meadows. All the townhouse units will be two (2) bedroom units. They are providing a deed restriction that states that each townhouse unit will be limited to two (2) bedrooms which is permitted under Title 5. Normally they would have to design the system for three (3) bedrooms at three hundred thirty (330) gallons per day for each unit. I recommend granting the variance.

Mrs. O'Rourke asked the Board members if they have any questions.

Mr. Grady asked if all the units will be using shower heads and toilets that mitigate the usage of water.

Mr. Cricones replied yes.

Mr. Grady asked is that in writing.

Mr. Cricones replied that he uses all low energy certified equipment for low heat and low light use.

Mrs. O'Rourke asked will there be any commercial or industrial buildings in that area that could cause noise problems.

Mr. Cicones explained that there is a deed restriction that states that this project abuts industrial property. There is a natural buffer around the property. It will not be like Swanson Meadows.

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

Mr. Reader made a motion to grant a variance of Board of Health Rules and Regulations, Chapter 5, Section 5.3.007 in order to construct a subsurface sewage disposal system with a design flow of two hundred twenty (220) gallons per day for each dwelling unit of a proposed twenty-six (26) unit townhouse project Ava Estates to be located at 84-90 Rangeway 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 Billerica Health's Rules and Regulations, Chapter 5, Section 5.3.007.
- 2) The Board of Health conducted a public hearing on November 5, 2012 and properly notified abutters in accordance with Billerica Health Regulations, Chapter 1, Section 1.2.007.
- 3) The applicant agrees to a deed restriction limiting the use of each dwelling unit to two (2) bedrooms. This restriction shall become null and void upon an approved connection to the municipal sewer system.
- 4) The applicant's request appears to be reasonable and will comply with the Massachusetts State Environmental Code, Title 5 and all other applicable Board of Health Rules and Regulations. The Board of Health has granted said variance to similar projects in the past.
- 5) The Board of Health will impose reasonable conditions to ensure the project is constructed in accordance with approved plans.
- 6) The Board of Health has determined that the actions proposed by the applicant are adequate measures to protect the public health and environment and complies with the intent of Board of Health Rules and Regulations. Further, approval of the applicant's request will not be detrimental to the public health and environment.

CONDITIONS

Standard conditions number 1, 2, 3, 4, 5, 6, 9, 10, 11, 12, 13, 14, 15, 17, 18, 19, 21, 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 Noonan & McDowell, Inc. dated December 8, 2006 and stamped by Malcolm Parker McDowell, RPE#27652.
- B) This variance shall constitute a deed restriction limiting the use of each townhouse unit to a two (2) bedroom dwelling unit in accordance with Board of Health Rules and Regulations Chapter 5, Section 5.3.007 and extend to all future owners. Any change in use shall require written approval from the Board of Health. This deed restriction shall expire upon the completion of an approved connection to the municipal sewer system.
- C) The applicant shall provide a copy of the proposed condominium documents including the master deed and unit deeds to the Board of Health prior to the approval of any occupancy permits. Said documents must contain language which references the two (2) bedroom deed restriction for each dwelling unit.

Mr. Kane seconded. So voted unanimously.

7:35 p.m. Alliance Energy – 1 Republic Road – Hearing for Stormwater Management Approval

Mrs. O'Rourke stated the next item on the agenda is the Alliance Energy, 1 Republic Road, hearing for Stormwater Management Approval.

Anthony Guba presented the Board with a large scale drawing of the proposed gas station/convenient store.

Anthony Guba, Ayoub Engineering, Inc., representing Alliance Energy identified himself. Black Cove, LLC is the property owner. Mr. Guba explained that this property is located at the corner of 1 Republic Road and Treble Cove Road which was formerly used as a restaurant and is presently boarded up. We have gone through the Zoning Board process to reconfigure the three lots into two conforming lots. The proposal is to demolish the building closest to the intersection and construct a gas station/convenient store with a drive through window. I was not aware that we had to come before the Board of Health. We submitted the stormwater plan which has been reviewed by Phil Paradis of BETA Group. Mr. Paradis submitted his comments last week and we responded to those comments and addressed most of the issues. The only two (2) issues that remain is the driveway on Treble Cove Road and the proposed Best Management Practice (BMP) off site to address potential pollutants from the gas station use. Mr. Guba pointed to the plans and explained the location of the proposed project. Mr. Guba pointed to the location of the gas station coming off of Route 3. The proposed improvements include a new 4,300 square foot food mart, (1,000 square feet on the second floor). Mr. Guba pointed and explained that there will be five (5) gasoline islands under a canopy to the south side of the new mart and

three (3) diesel islands under a separate canopy to the northeast of the mart and new underground storage tanks. Mr. Guba pointed to the location of the convenient mart, the drive through window and the entrance and exit on the proposed plan. Mr. Guba explained that a traffic study was done. The majority of the site will remain paved. The stormwater will go across the property that Black Cove owns to a catch basin on the back side of the property. There is a culvert that goes under the Route 3 ramp and across to the other side of the highway. Site runoff will be improved from existing conditions by reduction of the impervious area and by infiltrating runoff from the food mart and canopy roof areas. This will reduce both the rate and volume of the runoff from the site and increase the recharge rates. Mr. Paradis from BETA Group suggested that this site is considered an LUHPPL (land use with higher potential pollutant load) because of the gas station use. Mr. Paradis suggested that we should introduce some type of BMP to treat the stormwater runoff from the site before it goes into the vegetated wetland and the state drainage system. We originally suggested putting in an oil grit chamber however BETA Group suggested that we should look at the size. We looked at a stormceptor unit or Fortek unit which would work better because of the size. It will be located off site and we are looking to treat all the water that is coming off of the entire three (3) acres as opposed to just the water that is coming from the 1.3 acres of the site itself. We do not have a final BMP at this time. I would like to size that unit if the concept is agreeable with BETA Group and get final approval. The contractor is trying to get the work done before the winter so we are looking to expedite the project.

Mrs. O'Rourke asked how many pumps and islands are there going to be.

Mr. Guba explained that there will be ten (10) pumps and fourteen (14) fueling positions. Mr. Guba pointed to the plans and explained the fueling positions for both cars and trucks.

Mrs. O'Rourke asked are all the pumps self-service.

Mr. Guba replied yes.

Mrs. O'Rourke asked what the name of the gas station will be.

Mr. Guba replied it is a Mobil Station. The diesel area may be branded Global as opposed to Mobil. There will be a Mobil flag in the island out front.

Mrs. O'Rourke asked about the vapor recovery system.

Mr. Guba replied yes, there will be a 60C compliant Stage 1 vapor recovery system on the tanks. In Massachusetts a Stage 2 vapor recovery system is not required in new stations. Stage 2 will eventually be phased out.

Mrs. O'Rourke asked about the paving company that used to be located on that property. Will it be necessary to dig up any contaminants?

Mr. Guba replied that we have done a couple of test pits and there is no contamination on the property. Alliance is only going to be leasing the property. Black Cove is the owner. A 21E Report was not done. As far as I know there aren't any contaminants on the property. The excavation for the foundation and footings for the canopies is fairly shallow except for the tank area itself.

Mrs. O'Rourke asked when that was a restaurant was there an exterior grease trap.

Mr. Guba explained when the building was a restaurant they had a big septic system out front. They were not tied into municipal sewer. We have removed the septic system and will tie this new facility into the municipal sewer system.

Mrs. O'Rourke asked was there an exterior grease trap there.

Mr. Berube explained that he was present when they removed the entire septic system and there was no exterior grease trap. The septic system was very large.

Mr. Guba explained the proposal is to install a 1,500 gallon grease trap for this new facility.

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

Mr. Grady asked about the pumps currently at the bus station.

Mr. Guba pointed and explained the diesel facility has a 12,000 gallon underground tank for the buses.

Mr. Grady asked are they separate entities.

Mr. Guba replied yes they are totally separate entities.

Mr. Grady asked Mr. Courtemanche is the system similar to the one that has been installed for the new Cumberland Farms on Boston Road.

Mr. Courtemanche replied yes.

Mr. Grady asked if the slope will change.

Mr. Guba explained most of the grade will remain the same. We will raise the grade a little because we are adding a driveway. The rest of the site will remain the same. Mr. Guba pointed to the plans and explained the sewer and grease trap line. There will be an excess of two (2) feet extra slope.

Phil Paradis, BETA Group, identified himself. Mr. Paradis explained that the driveway on the Treble Cove Road is at a low point so he wants to make sure that all of Treble Cove Road will not be draining through the site. The applicant is proposing to provide a BMP that will take care of the whole

property. The project was not going to impact any wetland disturbance. However, the Conservation Commission wants to add several conditions that the Board of Health may want to add to their decision. The conditions include erosion control and stockpiles outside the buffer zones and submit a dewatering plan for review. Mr. Guba has done a good job in providing a stormwater plan on the site and the BMP will provide a great benefit.

Mrs. O'Rourke asked can you enter and exit from Treble Cove Road.

Mr. Guba pointed to the plans and explained you can only make a right turn out of the site from Treble Cove Road.

Mrs. O'Rourke asked about entering or exiting from Republic Road.

Mr. Guba replied that is a two way driveway and the truck traffic will go right.

Mr. Reader asked have you done some work on Treble Cove Road.

Mr. Guba explained that part of the approvals for the site included a half million dollars' worth of offsite improvements. Mr. Guba pointed to the plans and explained those improvements. Some of the money has been put into escrow for future potential signals at the intersections. Anyone that I have talked to in Town has stated that this will be a big improvement.

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

Mr. Berube explained that this will be an improvement over what is currently there.

Mr. Grady made a motion to grant stormwater management approval pursuant to Board of Health Rules and Regulations, Chapter 6 for the construction of a food mart/fueling station at 1 Republic 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 Billerica Health's Rules and Regulations, Chapter 6 inclusive.
- 2) The Board of Health conducted a public hearing on November 5, 2012 and properly notified abutters in accordance with Billerica Health Regulations, Chapter 1, Section 1.2.007.
- 3) The applicant proposes to completely redevelop an existing commercial lot containing a vacant building once occupied by a food service establishment. The scope of the project includes the demolition of all site features, the removal of the existing subsurface sewage disposal system and the construction of a 4,330 square foot food mart, a five (5) island fueling area under a canopy on the south side of the food mart and three (3) diesel islands under a separate canopy to the

northeast of the food mart, new underground storage tanks, a stormwater management system as well as new paving and landscaped areas.

- 4) The project was reviewed by Phil Paradis, Jr. of BETA Group, Inc., the Board of Health's Consulting Engineer, for compliance with applicable drainage regulations.
- 5) The Board of Health will impose reasonable conditions to ensure the project is constructed in accordance with approved plans.
- 6) The Board of Health has determined that the actions proposed by the applicant are adequate measures to protect the public health and environment and complies with the intent of Board of Health Rules and Regulations. Further, approval of the applicant's request will not be detrimental to the public health and environment.

CONDITIONS

Standard conditions number 2, 3, 4, 5, 6, 8, 9, 10, 11, 12, 13, 14, 15, 17, 18, 19, 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 Ayoub Engineering dated March 21, 2012 and revised to November 1, 2012 and stamped by Alan J. Micale RPE#40143.
- B) This approval shall not take effect until it is properly recorded at the Registry of Deeds and a certified copy of this approval is returned to the Board of Health office indicating that a marginal reference was made on the original deed.
- C) If dewatering is determined to be necessary during work, the applicant shall submit a dewatering plan to the Conservation Department and Board of Health for review and approval prior to any dewatering activity occurring;
- D) Stockpiling of unconsolidated materials and storage of heavy equipment is not permitted within the Buffer Zone of wetlands;
- E) Servicing and fueling of heavy equipment is not permitted within wetlands or Buffer Zones;
- F) No trash, debris or other material is permitted to be installed or disposed of within wetlands or Buffer Zones;
- G) The applicant must provide food service establishment plans for the proposed convenience store to the Board of Health for review and approval.
- H) The Board of Health must approve of the best management practice (BMP) necessary for the site to conform to Standards 5 of the MA Stormwater Management Standards;

- D) The owner shall maintain maintenance records for the Stormwater Management Operations and
- J) Maintenance in accordance with the approved plan and provide them to the Board of Health and/or Conservation Commission upon request.
- K) The applicant must provide a signed Illicit Discharge Compliance Statement to the Board of Health.
- L) The applicant must provide a completed Emergency Spill Response and Cleanup Plan for Fueling Operations to the Board of Health.

Mr. Reader seconded. So voted unanimously.

Mr. Guba asked when the demo permit will be signed off.

Mr. Berube replied that the demo permit will be signed off on Tuesday, November 6th.

7:45 p.m. Nashoba Learning Group – 170 Lexington Road – Request Waiver of Regulations

Mrs. O'Rourke stated the next item on the agenda is Nashoba Learning Group, 170 Lexington Road requesting a Waiver of Regulations.

Maureen Vibert, Executive Director of the Nashoba Learning Group identified herself. Ms. Vibert explained that the Nashoba Learning Group is an organization that works with individuals with autism between the ages of 3 and 22. We currently have a Massachusetts Department of Elementary and Secondary Education facility in Bedford, MA that provides education and intervention services to 90 students in a 40,000 square foot 2 story building. In March 2013 we are opening an adult day program at 170 Lexington Road in Billerica for individuals aged 22 and older. This adult day program combines day habilitation services with job training and a community and life skills program. We will be performing a variety of skills training including teaching them how to prepare meals, money skills, how to create a shopping list and go to a local supermarket and purchase items that are needed and each day prepare their own lunch. This will consist primarily of utilizing microwaves and stoves to warm food up and make sandwiches.

Mrs. O'Rourke asked if anyone was going to live there.

Ms. Vibert replied no, it is only a day school Monday through Friday.

Frederic Begien, identified himself. Mr. Begien explained that part of the facilities is a kitchen area and will have a commercial dishwasher, a residential dishwasher and a commercial stove and a residential stove for training for preparing lunches. As part of the plan we would like to install an indoor grease trap of 40 pounds which would be emptied once a month. Our existing facility has an indoor grease trap. This facility will have the same kind of usage.

Ms. Vibert explained that the reason for a commercial kitchen is for training. We need to teach them the difference between a commercial dishwasher and a residential dishwasher and a commercial stove and a residential stove is so that they can understand the similarities and differences.

Mrs. O'Rourke asked where on Lexington Road the facility is located.

A discussion was held on the location of the facility.

Mrs. O'Rourke stated it is a wonderful thing that they are doing.

Mr. Reader stated that they should be commended.

Mr. Berube stated that Gary Courtemanche has reviewed this project so he can explain it to the Board.

Mr. Courtemanche explained that the proposed facility is a life skill training facility and not a cafeteria. The volume of grease that would be generated is minimal. It is not necessary to add the expense of an exterior grease trap to this project. I don't think there will be any maintenance issues. The Board of Health shall work with management to implement Best Management Practices (BMP's) to prevent or reduce the discharge of Fats, Oil and Grease (FOG) to the building drain and the sewage disposal system. The food manager shall train the staff to ensure that the BMP's are followed. The owner and employees of the Food Service Establishment shall sign an acknowledgement of BMP's for FOG.

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

The Board Members did not have any questions.

Mr. Berube recommended granting the Waiver of Regulations for this project.

Mr. Grady made a motion to grant a Waiver of Billerica Health Regulation, Chapter 5, Section 2.2.001 that requires the installation of an exterior grease trap to serve the proposed food service establishment to be located at 170 Lexington 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 2.2.001.
2. The applicant proposes to establish an educational facility to be located at 170 Lexington Road to provide education and intervention services to autistic students. The facility will contain a food service where students will develop skills in the areas of nutrition and meal preparation.

3. The operation will not generate any significant grease (e.g. there will be minimal food preparation consisting of reheating meals and making sandwiches and similar activities).
4. The applicant proposes to install an alternative grease recovery unit (GRU) within the proposed food service establishment (FSE). The interior grease recovery units will be monitored and cleaned whenever necessary to ensure proper functioning. A maintenance record shall be kept and made available for inspection by the Board of Health.
5. The Board of Health has determined that the actions proposed by the applicant are adequate measures to protect the public health and environment and complies with the intent of Board of Health Rules and Regulations. Further, approval of the applicant's request will not be detrimental to the public health and environment.

CONDITIONS

Standard conditions number 6, 10, 14, 15 and 25 in accordance with the Board of Health regulations and Special Conditions:

- A) The interior grease trap shall be installed in accordance with the Massachusetts State Plumbing Code, 248CMR2.00. The grease trap shall be accessible for inspection and maintenance.
- B) The applicant shall provide a copy of a maintenance agreement with a qualified service company to pump and maintain the interior grease traps whenever necessary to ensure proper functioning of the grease recovery system. The applicant shall keep all pumping and maintenance records and make them available for inspection by the Board of Health.
- C) The food service establishment (FSE) shall work with the Board of Health to implement Best Management Practices (BMP's) to prevent or reduce the discharge of Fats, Oil and Grease (FOG) and to the building drain and the sewage disposal system. The FSE shall train the staff to ensure that the BMP's are followed. The owner and employees of the FSE shall sign an acknowledgement of BMP's for Food Service Employees and submit the acknowledgements to the Board of Health.
- D) This waiver shall be subject to periodic review by the Board of Health to ensure compliance with applicable rules and regulations.
- E) In the event of a grease blockage or other significant violations relative to the maintenance of the grease recovery system, this waiver shall be **immediately** revoked. The applicant shall be required to install an exterior grease trap to serve the food establishment. The exterior grease trap shall be designed and constructed in accordance with the State Environmental Code, Title 5.
- F) Any change or expansion of the food service operation (e.g. menu change, etc.) requires prior approval of the Board of Health.

- G) This waiver can not be transferred from one person to another person, from one food establishment to another or from one type of operation to another.

Mr. Kane seconded. So voted unanimously.

8:00 p.m. Roy Bros., – 764 Boston Road – Request Waiver of Regulations for work within the Flood Plain

Mrs. O'Rourke stated the last item on the agenda is Roy Bros., 764 Boston Road, requesting a Waiver of Regulations for work within the Flood Plain.

Stefan Sokol, Groundwater & Environmental Services (GES), Inc. Licensed Site Professional Senior Project Manager on behalf of Roy Bros, identified himself. Mr. Sokol explained that GES is conducting an environmental investigation at the property under the Massachusetts Contingency Plan (MCP) Regulations. We have submitted a Notice of Intent to the Conservation Commission. We are present tonight requesting a Waiver of the Board of Health Rules and Regulations, Chapter 5, Section 5 in order to install the monitoring wells and soil/groundwater sampling activities on the property. We are planning to do this work before it snows. The proposed work is in support of the on-going environmental assessment of the Roy Bros. site within the Federal Emergency Management Agency (FEMA) Flood Plain and the Green Engineering Flood Plain. We are required to assess and determine what is present on the property and clean it up.

Mr. Berube explained the work is being done in the flood plain and there will be minimal impact to the flood plain. This work is necessary. The Board has granted similar requests for other facilities in Billerica. In July 2012, the Board granted a similar request to Bard Corporation, 129 Concord Road. I recommend granting the Waiver of Regulations. This work is being done for the cleanup of the site.

Mr. Reader asked have they started cleaning up the site.

Mr. Berube replied there has been ongoing activity.

Mr. Reader asked are there any monitoring wells currently on the site.

Mr. Berube replied yes, there are some.

Mr. Sokol explained that there is a series of wells on the site that have been there for many years.

Mr. Reader asked how are the other monitoring wells working.

Mr. Sokol replied that they are working fine.

Mr. Reader asked who requires the monitoring wells.

Mr. Sokol replied that the MassDEP Regulations require the monitoring wells. We have to determine where things are at and whether they are going to require a cleanup or whether they are sufficient.

Mr. Reader asked has some of the cleanup of the property been done.

Mr. Sokol replied not recently to my knowledge, but back in the nineties some cleanup work was done.

Mrs. O'Rourke asked what they are monitoring.

Mr. Sokol replied back in the eighties they had some wastewater discharges and this was when they were not connected to the sewer system. The wastewater discharges had some contaminants in them and those are the areas that we are targeting now. Other areas were previously targeted. We are trying to determine where it is, where it could go and where it couldn't go. We have a handle on it now. However, we are required by the MassDEP regulations to confirm what the delineation is. That is what we are trying to do now. It is required that we encroach into the wetlands.

Mrs. O'Rourke asked do they wash the tankers when they come back from deliveries.

Mr. Sokol replied they have a washing operation and a wastewater treatment system which they monitor. They treat the discharge and it goes into the sewer system. There aren't any onsite discharge systems any more.

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

The Board Members did not have any questions.

Mr. Kane made a motion to grant a Waiver of Billerica Health Regulations, Chapter 5, Section 5.5.005 (1) to allow work within the flood plain at Roy Bros, Inc., 764 Boston Road to establish monitoring wells in compliance with Mass DEP 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 environmental site investigations performed in accordance with the Massachusetts Contingency Plan (MCP). Roy Bros. has operated a chemical transportation facility since approximately 1948. Current operations consist of hauling liquid and dry industrial chemicals, truck washing and vehicle maintenance. Environmental investigations are related to historical operations and former on-site wastewater discharges.

- 3) The applicant is proposing the installation of seven monitoring wells and two piezometers within the Flood Plain. The installation is necessary to monitor groundwater conditions and potential contamination in groundwater and soils within environmentally sensitive resource areas. 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 Groundwater and Environmental Services, Inc. (GES), dated August 21, 2012.

Mr. Reader seconded. So voted unanimously.

Town Counsel Litigation Status Report

Patrick Costello, Town Counsel, provided an update regarding the litigation status of cases involving Empire Recycling (36 Sterling Road) and Hafiz Johanni d/b/a/ Billerica Getty Mart a/k/a BP Gas Station (581 Boston Road).

Open Microphone

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

No one was present for open microphone.

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

The Board adjourned at 8:40 p.m.

Respectfully submitted,

Sandra Giroux
Secretary

Joanne M. White
Recording Clerk