

**BOARD OF HEALTH MINUTES**  
**February 7, 2011**

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 (new member), Richard Berube, Director, and Joanne White, Recording Clerk.

**ACCEPTANCE OF MINUTES**

Mr. Berube explained that there was an issue with 21 Pershing Street and the Conservation Commission that is the reason that the Meeting Minutes of October 1, 2007 were never accepted by the Board. Mr. Berube stated because of the issue I thought 21 Pershing Street may have to come back before the Board for another hearing. The issue was finally resolved however it took a long time.

Mr. Reader made a motion to accept the Meeting Minutes of October 1, 2007.  
Mrs. Giroux seconded. Four (4) voted in favor one (1) vote abstained.

Mrs. Giroux made a motion to accept the Meeting Minutes of December 6, 2010.  
Mr. Kane seconded. Four (4) voted in favor one (1) vote abstained.

**CORRESPONDENCE**

**Country Club of Billerica, Inc.**

Mr. Berube explained that he received a letter from Attorney James Dangora, Sr. regarding the Country Club of Billerica. The letter is addressed to the Board of Selectmen. In 2004, 8.19 acres of the overlay area was removed from the recreation category. The Country Club is requesting the removal of an additional 4.36 acres. The land is classified for real estate tax purposes as recreation land pursuant to M.G.L.A, Chapter 61B. This notice is required by M.G.L.A., Chapter 61B, Section 9 regarding the town's right of first refusal. The Country Club plans to go forward with Phase II construction.

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

The Board Members did not have any questions.

**Massachusetts Health Officers Association – Tobacco Cessation and Prevention Program**

Mr. Berube explained that he received a letter from MHOA regarding the Massachusetts Tobacco Cessation and Prevention Program (MTCP). MTCP will be conducting tobacco retail inspections/compliance checks in coordination with the Food & Drug Administration (FDA). Billerica has been selected as part of the statewide inspections. Once the FDA has determined the status of the information, a follow-up letter with the results including any enforcement action taken by the FDA will be sent to the MTCP. Then the MTCP will forward a copy to the Board of Health.

**Recreation Department**

Mr. Berube explained that he received a memo from the Recreation Department announcing that Yankee Doodle Homecoming Weekend will be held September 16-18, 2011. The theme of this event will be the Community Time Capsule. The Health Department will be conducting food inspections during this event.

**BOARD OF HEALTH BUSINESS**

**Introduction of New Board Member – Mike Grady**

Mrs. O'Rourke introduced Michael Grady, a new member of the Board. Mrs. O'Rourke thanked Mr. Grady for applying and accepting the position.

Mr. Berube asked the Board Members if they would like to send a letter to Fred Kenyon thanking him for his dedication and service.

The Board agreed that would be a nice gesture and authorized Mr. Berube to send the letter on behalf of the Board.

**Health Department Activity Reports**

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

Mr. Berube explained that there has not been too much activity since Health Agent, Angela Braun left.

Mr. Berube explained that he would begin with the Public Health Nurse, Christine West's report. Christine continues with communicable disease reporting. There was one reported case of Malaria. An

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individual visiting from India was treated at Lowell General Hospital. The individual recovered and went back to India. Flu vaccine is still available. The Health Department plans on participating in the Billerica Health and Wellness Fair on April 9, 2011. Christine will be offering Tdap for adults at the fair.

Mr. Berube explained that Health Agent, Phavy Pheng had twenty-five (25) new complaints over the last two months. Two (2) mold complaints, eleven (11) improper disposal or illegal dumping complaints, two (2) noise complaints and three (3) housing complaints. Thirteen (13) nuisance complaints were closed over the last two (2) months. Mr. Berube explained that one of the mold complaints was from OfficeMax 700 Boston Road. The employees complained that there was mold on the rear wall resulting from the roof leaking. We investigated the complaint and they were trying to cover it up by painting the wall. I informed them that they had to replace the entire wall. OfficeMax applied for a building permit and replaced the drywall. The other mold problem was at Middlesex Crossing. A woman complained to management that there was mold around one of her windows. Management came out and took care of the problem but the woman was not satisfied, so she contacted the Board of Health office. We investigated the complaint and there were no obvious signs of mold. The woman stated that she was going to hire a company to check out the problem. We have not heard back from her, so the case was closed. Most of the improper disposal/illegal dumping cases are related to curbside collection. The Department of Environmental Protection (DEP) had set up cameras on Saville Street because that is a big problem area for illegal dumping. The camera captured an individual illegally dumping.

Mr. Reader asked did you catch the person.

Mr. Berube replied that the person was caught. They removed and properly disposed of the trash and were fined one hundred (100) dollars. The fine was paid.

Mr. Berube explained that the noise complaints were from dumpsters being emptied in the early morning hours. We informed the businesses on Cook Street of the complaint. There have been no further complaints in that area. The other complaint was about the dumpsters at Friendly's and Sovereign Bank being emptied at early morning hours. The information that we were given did not correspond with the trash disposal schedule. Friendly's trash is removed during the daytime because their dumpster is enclosed behind a locked gate.

Mr. Berube explained that there have been a lot of complaints regarding no heat. Once the landlords have been notified the issues were resolved.

Mr. Berube explained that there have been three (3) food complaints. One was for the overflowing dumpsters at Chung King, Rick's Café, that issue has been resolved. The Market Basket at 700 Boston Road had outdated dairy products on the shelf. We advised them to remove the outdated dairy products and monitor the product's shelf life more closely. We closed the Pongal Restaurant on January 24, 2011 because the sprinkler system burst in the dining area. The restaurant was closed for a couple of days to fix the system.

Mr. Berube asked the Board Members if they had any questions.

Mrs. Giroux asked when do you think the Health Department will start to receive mold complaints from leaks due to the storms we have been experiencing.

Mr. Berube explained once something gets wet you create the environment for mold to grow. All you need is heat and moisture. If you do not address any water damage then mold problems will surface. It is important to have any leaks fixed as soon as possible. We will see the building permits related to those problems.

**Introduction of New Health Agent – Gary Courtemanche**

Mr. Berube introduced the new Health Agent, Gary Courtemanche. Gary is Angela Braun's replacement. Mr. Berube explained the criteria used in hiring the new Health Agent.

All the Board Members welcomed Mr. Courtemanche.

Mr. Courtemanche stated that he appreciates the opportunity to work in Billerica.

Mrs. O'Rourke asked Mr. Courtemanche where he lives.

Mr. Courtemanche replied that he lives in Lancaster. Mr. Courtemanche explained that for the past three years he has been working in Amherst, MA so working in Billerica will be a lot closer for him.

Mrs. O'Rourke and the Board Members wished Mr. Courtemanche good luck.

**Proposed FY2012 Budget**

Mr. Berube stated the next item is the proposed FY2012 budget. Mr. Berube explained that the budget is level funded again this year. There is a reduction in personnel because the Senior Clerk position will no longer be funded. Mr. Berube asked the Board Members if they had any questions regarding the proposed budget.

The Board Members did not have any questions.

**FY2012 Annual Report**

Mrs. O'Rourke stated the next item is the FY2012 Annual Report. Mrs. O'Rourke asked the Board Members if they had any questions regarding the Annual Report.

The Board Members did not have any questions.

Mr. Berube explained that the numbers are fairly consistent from year to year.

**Water Conservation Committee**

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

Mr. Berube stated that we are looking for a volunteer to fill Fred Kenyon's position on the Water Conservation Committee. Mr. Berube explained that the position could be shared between a couple of the Board Members.

The Board Members discussed how they were going to fill Fred's position.

Mr. Reader volunteered to attend the meetings from April to September.

Mr. Kane volunteered to attend the meetings from October to March.

Mrs. Giroux volunteered to be the emergency backup.

Mrs. O'Rourke thanked the Board Members for volunteering to fill Fred's position.

Mr. Berube stated that he would send a memo to the Chairman of the Water Conservation Committee regarding the Board of Health representatives. Mr. Berube asked who is going to attend the meeting on February 16, 2011.

Mr. Kane stated that he would attend the February 16<sup>th</sup> meeting.

**Emergency Call List**

Mr. Berube explained that the Emergency Call List would be updated because of a couple of incorrect phone numbers and a couple of new additions. Please notify us of your correct information and the list will be updated and the new list will be given out at the next Board of Health Meeting.

**Invitation to join Healthy Community Tobacco Control Program**

Mr. Berube stated that the next item on the agenda is an invitation to join the Healthy Community Tobacco Control Program Collaborative. This is a formal invitation for the Billerica Board of Health to become a member of the coalition effective July 1, 2011. If the Board is in agreement with this program either the Chair or myself can fill out the form and send it in.

Mrs. O'Rourke stated that Mr. Berube can take care of the paperwork for the program.

Mrs. Giroux asked is there a cost associated with this program.

Mr. Berube replied no, all funding is provided by the Massachusetts Department of Public Health.

Mrs. O'Rourke asked didn't we belong to this program before.

Mr. Berube replied no, the host agency for this program is Andover. The other program was hosted by Winchester. We were not happy with the Winchester program.

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

Mrs. Giroux made a motion for the Billerica Board of Health to accept the invitation to join the Healthy Community Tobacco Control Collaborative.

Mr. Reader seconded. So voted unanimously.

**Beaver Control 2010 Year End Report**

Mr. Berube stated that the next item on the agenda is the Beaver Control 2010 Year End Report. Mr. Berube explained that this report stated the number of trappings that have been done and the water level control devices that have been replaced on several sites.

Mrs. O'Rourke asked if the blocked culvert at Republic Road has been taken care of.

Mr. Berube replied that he could not go into a lot of detail because there is a lawsuit between the Town of Billerica and Burlington Sand and Gravel. This is something that will be going on for awhile.

Mrs. Giroux asked what is the potential cost for water level control device replacements and major corrosion repairs.

Mr. Berube replied that all depends on the site. It may cost a few hundred dollars to a couple of thousand dollars depending on the location and what kind of work has to be done.

Mrs. Giroux asked how much are we budgeting for the year.

Mr. Berube explained beaver control is funded through the Conservation Commission's budget.

Mrs. Giroux asked what are they budgeting for the year.

Mr. Berube replied he did not know what they are budgeting for FY 2012. The Town Manager has been very supportive in finding the funds that are needed for beaver control because there are many residents that have been affected. When the residents complain to the Town Manager that they are having a problem with beavers, he does not mind supporting us with the funds we need.

Mrs. O'Rourke asked about the Cook Street culvert and the High Street/Middlesex Canal culvert that need to be replaced.

Mr. Berube explained that the entire Middlesex Corridor is a problem because of all the wetlands associated with that area. There is a large population of beavers in that area.

Mrs. O'Rourke asked who will be replacing the culverts.

Mr. Berube replied Beaver Solutions will do the work once we authorize them to.

Mr. Reader asked is the culvert on Cook Street the one that goes under the road.

Mr. Berube replied yes.

Mr. Reader asked wasn't that culvert replaced when the work was done on Cook Street.

Mr. Berube replied they did not go down that far. This culvert is towards the Wilmington line where Lubber Brook crosses Cook Street.

Mrs. Giroux asked about the Burnham Road culvert that is listed as inactive.

Mr. Berube explained that we have not seen any activity there since the culvert was moved under the railroad. We do not know if it is worth spending the money at this location since we have not seen any activity there in the past couple of years.

**McFarland Cascade – RAM Completion Report**

Mrs. O'Rourke stated the next item is McFarland Cascade RAM Completion Report.

Mr. Berube explained that the RAM Completion Report was sent my email to all the Board Members. Included in the Board's package is a copy of The Notice of Audit Findings from DEP. The RAM Report states what GZA did on behalf of McFarland Cascade. This work was done in addition to the work that was done under the Massachusetts Contingency Plan (MCP). Soil was removed from the surface at a couple of locations where the railroad ties were stored. Enclosed is a map showing the locations where the soil was removed. The amount removed was just a little over a truckload. They went ahead with the RAM plan because of the discussions with McFarland Cascade and the property owner. They were concerned with the soil contamination. The Notice of Audit Findings states that DEP has issued some violations and requested that an additional assessment be done. They should have checked for Dioxin in the soil because it is an impurity in wood treatment chemicals as well as some other components in the preservatives in wood products. DEP does not feel that the Human Health Risk Characterization was adequate. DEP is in agreement that the contamination is primarily present in surficial soil at a depth of up to 6 inches and not in the deeper soil samples however DEP recommends a fifty (50) foot sampling grid as an adequate characterization of the disposal site. DEP has given GZA until June 1, 2011 to correct the violations identified and provides documentation of such action to DEP.

Mr. Reader asked is DEP giving GZA up to June to respond or to correct the violations.

Mr. Berube replied that GZA has to correct and respond and reply back to DEP by June 1, 2011.

Mr. Reader asked are they going to have to take more soil from the area.

Mr. Berube replied they will have to do additional testing because they did not define the limits of the soil contamination and DEP is requesting that GZA test for Dioxin. This process will not start until late spring because of all the snow.

Mrs. Giroux stated that the Board suggested that they remove 6 inches of soil at the entire site.

Mr. Reader asked is DEP in charge.

Mr. Berube replied that it falls under DEP's jurisdiction through the MCP process.

Mrs. Giroux asked will the Board continue to get the updates.

Mr. Berube replied yes.

Mrs. O'Rourke asked the Board Members if they had any questions regarding McFarland Cascade. The Board Members did not have any questions.

**Reconvene Hearing for OfficeMax**

Mrs. O'Rourke stated the last item under Board of Health Business is to Reconvene the Hearing for OfficeMax.

Mr. Berube explained that at the last meeting OfficeMax agreed to relocate their shipping and delivery operation. The move to 16 Progress Road was completed by January 31, 2011. Mr. Kevin Crowley, Director of Operations for OfficeMax, Mr. Thomas Berka, and Attorney Jeffrey Roelofs are present.

Mr. Crowley explained that as we agreed back in October 2010 we would complete our move out of 9 Progress Road by January 31, 2011. We signed a lease with 16 Progress Road and the move was completed by January 29 2011. On February 7, 2011 I received a call from Mr. Berka informing me that on Thursday, February 3, 2011 at approximately 5:45 a.m. he was awoken by disturbing engine noise of trucks running in the facility at 9 Progress Road. Up to that point I thought everything was okay. I checked with the delivery manager and we could not figure out why there was a delivery truck at 9 Progress Road because the operation had been completely moved to 16 Progress Road. Mr. Berka indicated that the truck looked like one of the regular OfficeMax fleet trucks. I checked with everyone to find out if they knew anything about this situation. Nobody knew anything. Apparently the truck was idling for a long time. We still have an operation running out of 9 Progress Road. Tomorrow, February 8, 2011 I have scheduled a meeting with all the truck drivers to reinforce with them that they do not have to go to 9 Progress Road. I asked Mr. Berka to please get the license number so that we can take further



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action, if that happens again. Everyone has been informed that there should not be any truck activity at 9 Progress Road.

Mr. Reader asked what operations are still going on at 9 Progress Road.

Mr. Crowley replied there are still a few people in the office. We have a furniture department that designs furniture for our customers. It is all office work. There isn't any product being shipped out of 9 Progress Road. There is no truck activity going on at 9 Progress Road.

Mr. Reader asked is there anyway to block off the lot at 9 Progress Road at night.

Mr. Crowley explained right now some of our employees go back and forth to pick up some of their supplies. There is a chain that we put up on the weekends. When the ground thaws we will move the chain back. There will also be a sign hanging off the chain that says No Entrance. We are trying to do all the things we can to prevent another incident from happening. I know this is bothersome to Mr. Berka and I am trying my best to fix the problem.

Mrs. O'Rourke asked the Board Members if they had any questions for Mr. Crowley. The Board Members did not have any questions. Mrs. O'Rourke thanked Mr. Crowley for moving the operation in the time frame that was set. Mrs. O'Rourke asked Mr. Berka if he would like to comment.

Mr. Berka thanked Mr. Crowley for all his efforts. Mr. Berka explained that he sent a written description of the event that happened on Thursday, February 3, 2011 to the Board of Health. For the first time in twelve (12) months I have been able to sleep. I spoke to Mr. Crowley this morning and got an update on the move. I thought because of all the snow the move to 16 Progress Road may need a little more time. Mr. Crowley told me that he was committed to move the operation by the deadline and make sure that all the truckers were informed. I do believe that Mr. Crowley is committed. I am hoping that Board would continue the hearing for another month to monitor this situation. I am optimistic that the truckers will comply with Mr. Crowley's orders and this matter will be finally resolved.

Mr. Berube asked if Attorney Roelofs had any comments.

Attorney Roelofs reiterated that Mr. Berka is requesting that the Board keep the hearing open until the next meeting as a way of monitoring this situation. In the event that some problems arise the hearing would still be open.

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

Mr. Berube explained that the Board could vote to keep the hearing open until the Board of Health Meeting in March or they can vote to close the hearing tonight if they are satisfied with the actions taken by OfficeMax to resolve the noise generated by shipping operation.

Mr. Reader stated that he is satisfied with OfficeMax's actions but he doesn't see a problem with keeping the hearing open until the next Board of Health meeting in case Mr. Berka has a problem that needs to be addressed.

Mrs. Giroux stated that she is satisfied with OfficeMax's efforts and is willing to close the hearing. If a problem arises the hearing can be then be reopened. I am very satisfied with OfficeMax's efforts especially with the weather conditions.

Mr. Kane stated that he is okay with closing the hearing as well due to the efforts that OfficeMax has made. Their efforts have been thorough and acceptable by Mr. Berka, his attorney and hopefully his neighbors except for this one incident. Mr. Kane stated that OfficeMax has responded appropriately regarding this incident of the idling truck. Mr. Berka and his attorney agree as well that the noise problem seems to have been taken care of.

Mrs. O'Rourke stated that she agrees. Everything that has been asked of OfficeMax has been completed. They met the deadline. I do not have any problem with closing the hearing and if need be the hearing can be opened again when necessary.

Mr. Berube stated that Mr. Berka has the right to file a new complaint if it is necessary and the Board of Health will investigate the problem at that time.

Mrs. Giroux made a motion to close the hearing for OfficeMax.

Mr. Kane seconded. Three (3) voted in favor and one (1) opposed (Robert Reader).

**7:15 p.m. Via Dell Amore Restaurant – 749 Boston Road – Request Approval of Common Victualer's License Application**

Mrs. O'Rourke stated the last hearing is Via Dell Amore Restaurant, 749 Boston Road, requesting approval of a Common Victualer's License Application.

Attorney Lentine provided the Board Members with a copy of the License Application, Name of the Individual or Corporation that pays Real Estate Taxes, Common Victualer License Application, the Restaurant Floor Plan, the Board of Appeals Certificate of Granting of Variance or Special Permit and the Board of Appeals Proceedings, Findings and Decisions

Mr. Berube explained that Attorney Stephen Lentine came to the Board of Health office with an application for a Common Victualer's License for 749 Boston Road. We have discussed this matter at past meetings. I provided the Board with a copy of the memo addressed to the Board of Appeal regarding the Special Permit Application for 749 Boston Road. When Steve came in with the application I refused to sign it because that would imply that I would be granting a permit for this establishment. They have not filed anything with the Health Department so based on that I refused to

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sign the application for the Common Victualer's License. Attorney Lentine asked for a hearing before the Board to request approval of the Common Victualer's License Application.

Attorney Stephen Lentine, 409 Boston Road, representing the Turco family identified himself. Attorney Lentine explained that present with him tonight is Sal Turco, Sr. and Sal Turco, Jr. Sal Sr. and Sal Jr. are the trustees of STH Realty Trust. Sal Jr. will be the manager of the proposed restaurant. Over the last seventeen (17) years there have been a couple of restaurants at that site. First there was a Pizza Express and that became Angelina's Restaurant. Angelina's Restaurant ran into some problems with the Department of Revenue and was seized. All the assets of the restaurant were auctioned off by the Department of Revenue. The Turco family purchased all the equipment from the Department of Revenue. The Turco family proposes to make some minor interior changes to the property and increase the seating from 20 seats to 24 seats within the same square footage of the existing building. Mr. Turco came to see me and we talked about the procedures that needed to be followed under the Zoning By-Laws. Under the Zoning By-Laws a Special Permit expires for restaurants when there is a change of ownership. The Board of Appeals has granted the Special Permit with the new hours of operation. The Turco Family intends to have a restaurant similar to Strombolis and Mangia Mangia. The next step in the process is the Common Victualer's License. I prepared the form for the Selectmen and got all the necessary sign offs. The application has a copy of the footprint and the floor plan for the site. It has two (2) restrooms for the patrons and separate restrooms for the employees. I went to see Rich for his sign off and I knew that because of the letter that Rich sent the Board of Appeal that I would have to discuss any Board of Health regulations with Rich. The ZBA told me that I had to get the sign off from Richard Berube, Director of Public Health. Attorney Lentine stated the floor level of the restaurant as it exists over the last 17 years is below the flood plain so the restaurant does flood periodically. The Board of Health records indicate that there have been two incidents over the past 17 years. One incident was in 2001 and one was in 2010. Rich is requesting that we raise the first floor elevation above the flood plain. That is going to be very expensive. I asked Rich to provide me with a copy of the Board of Health Rules and Regulations that state if you are going to use an existing structure that you would have to raise the existing floor if the structure was in the flood plain. I understand if you were going to put on a new addition or construct a new building in the flood plain that you would need to comply with the regulations. Rich provided me with a letter on January 31, 2011 citing the regulation that supports his argument. I could not find within those regulations anything that addresses that the first floor level has to be above the flood plain. Rich cited some sections in the food code. I could not find anything in the food code that addresses the first floor level. Those regulations apply to additions and new construction not minor renovations to the interior. The proposed restaurant is going to be in the same footprint. Attorney Lentine stated that he could not find anything in the regulations that address the first floor level and the flood plain. We do not have any problems with the grease trap or the exterior dumpster or the restrooms. I did not see anything in the regulations that requires my client to spend thousands of dollars to raise the floor level of this pre-existing restaurant that has been there for 17 years. We are looking for some direction from the Board. We are looking for the Board to approve that Mr. Berube sign the application so that the restaurant could be back on the tax rolls.

Mr. Berube stated that by signing off on the application it implies that we are going to grant them a permit to operate a food service establishment. They have not submitted anything to the Board so that

is a presumption on their part. They should submit a variance for work within the flood plain and a plan review that shows what they are going to do. That hasn't occurred. Maybe then I would sign off on the application. Health Agent, Angela Braun met with Mr. Turco and provided them with a guidance package on what needed to be submitted to the Board of Health. We have not seen anything. As far as the floor being raised there is nothing specific in the regulations. However the Board of Health can require anything whether it is an upgrade of the equipment or an upgrade of the facility if we think it is in the best interest of the public health. There have already been two flooding events and that is too many as far as I am concerned. You are expanding the operation and that needs to be taken into consideration. You have a copy of the memo that I sent to the Board of Appeal and I do not think this location is appropriate for a food service operation. There has been a history of problems at that location. If the applicant can show us some plans for the necessary improvements then we can go forward and maybe grant them a permit. At this point I don't feel that we are obligated to do anything.

Mrs. O'Rourke stated that she remembers years ago when Jack Morris was the Director the area where the swing sets were located flooded up to the building. The recording studio always flooded. The entire building used to flood. I would think if you want to have an upscale restaurant that you would want to do everything possible to make sure that it is not going to flood. If that means raising the floor or maybe installing louvers, then that is what should be done.

Mrs. Giroux stated that she agrees with Mr. Berube and Mrs. O'Rourke that the flooding problem has been ongoing and something should be done.

Mr. Kane stated that he has public health concerns with the building itself. My other concern is that we do not have any information about what the plan is. Mr. Kane asked what the floor elevation is.

Attorney Lentine replied that he would provide the Board with the plans and the existing floor elevation. The elevation has not changed.

Mr. Kane stated that when there is a change in ownership or a change in operator that the license comes with, there are certain responsibilities that are not necessarily grandfathered. Because someone is doing a similar business there under a different license or different ownership does not mean that they are grandfathered in. If they are not in compliance with the regulations then it is not in compliance. Not having the information to look at I agree with not signing off on the plans without having the opportunity to review everything that is involved with this approval process.

Attorney Lentine stated that he could not find any specific regulation that states we have to maintain the first floor of an existing structure above the flood plain for any type of use. I could not find any specific regulation that requires that for an existing structure. This structure has been there for many years. We are only increasing the seating by four (4) seats. All the work that is being done is minor renovations within the existing building itself there will be no impact to the flood plain. I have never had a client come before this Board for minor interior renovations. You are asking us to apply for a variance and I don't see anything in your regulations that require a variance.

Mrs. O'Rourke stated that we are talking about a building that floods when we have a significant rainfall. We are talking about minor repairs when it floods. I don't think the repairs are minor. If it was your house wouldn't you want to make it so that your house did not flood anymore?

Attorney Lentine replied that if it costs hundreds of thousands of dollars to make my house flood proof and I can't afford it then I am not going to do it. The only reason we are here before the Board is because of a Common Victualer's License that we need signed off. There is nothing in my mind or in the Board of Health regulations that triggers the need for a variance. I understand that you want more detailed plans.

Mr. Berube stated that you have not submitted anything.

Attorney Lentine explained the process that is used when applying for a Common Victualer's License and the sign offs that are needed. If we were putting on an addition or if it was a new structure then I could understand the need for a variance. Attorney Lentine explained that he has never heard of an existing structure requiring a variance for minor renovations or that the floor needs to be raised.

Mr. Berube explained that a variance is required for any work within the flood plain. Stelio's had to come before the Board for work within the flood plain. Whether or not the renovations are minor or major the Board can still require upgrades to the equipment and the facility in the interest of public health. It is not specified like that in the regulations but the intent is there.

Attorney Lentine asked has there been any other occasion where a restaurant is adding seats or making minor renovations in the flood plain and a variance is required.

Mr. Berube replied this is not the first time we have done this. We have done this before with other establishments. We have required them to upgrade their equipment and their facility.

Attorney Lentine stated my question is has there ever been an occasion where a restaurant that is within the flood plain been required to come before this Board for a variance when they are only making interior renovations and not changing their footprint. I don't think that has ever happened.

Mr. Berube replied you are still located in the flood plain and still subject to the regulations.

Attorney Lentine stated I agree with you when there is a situation where someone is putting on an addition or building a new structure. I don't know of any other restaurant that has come before this Board for floor plan alternations and interior renovations in the restaurant. It appears that we are being singled out? Other restaurants have changed ownerships such as the Riverview and Stelio's within the last 10 or 15 years. I represented the Pongal and they may be in the flood plain. The Pongal Restaurant changed ownership and we did not have to come before the Board, they changed their floor plan and created a new bar area.

Mr. Berube replied the situation is different. We have seen this establishment flood out as opposed with the Pongal and the Riverview they did not experience the same type of situation. The Pongal and Riverview Restaurants may have had water in their basement but the main floor where they operate has never been flooded out like Angelina's. The same thing with the Jade Pacific, they may have experienced floodwater in their basement but not in the main floor where they conduct their business. There is a difference. Unfortunately when Angelina's floods, the flooding occurs in the main floor where they operate their business.

Attorney Lentine stated my argument is that this restaurant has been there for 17 years and now because the ownership has changed due to the business being seized by the Department of Revenue the Board of Health is requiring the new owner to apply for a variance. You are going to make the applicant spend a lot of money to raise the first floor level to satisfy a variance requirement that I do not think applies to this situation. Attorney Lentine stated that he is trying to avoid litigation.

Mr. Berube replied if we have to go to litigation so be it.

Attorney Lentine stated that he is trying to avoid litigation. That is why I asked you to cite me something specific in the regulations.

Mr. Berube replied I don't think the regulations can cite every specific example that may come up. I think it would be too cumbersome. So I think what you are asking is unreasonable. The regulations states that the Board of Health can require anything that we feel is in the best interest of the public health.

Attorney Lentine stated I think a court would say you are being a little unreasonable.

Mr. Berube stated then a judge can decide if I am being unreasonable.

Attorney Lentine stated that his goal was to come here tonight and try to eliminate the need for a variance and need to raise the first floor level. Everything else we are willing to work with you on.

Mr. Berube stated nothing has been submitted to this department for review. I can not make any judgments. I can only go on what exists and past history.

Attorney Lentine stated this is typically how the process works in the Town of Billerica the first step is to get the Application for a Common Victualer's License which you refused to sign.

Mr. Berube stated show me where it states that you have to go to the Board of Selectmen right after the Board of Appeal. You could have gone to the Building Department and initiated a building permit process. You could have set up a meeting with all the town departments and asked what was needed to reopen this establishment. There are many ways that you could have approached this project.

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Attorney Lentine replied that you know I typically do that when I am representing a major project. I have scheduled meetings with all the town departments when we were meeting about the mall. For this restaurant we are only looking to change the ownership on a restaurant that had a preexisting Special Permit. You don't usually have a large-scale department head meeting for that.

Mr. Berube replied that is not necessarily true. We encourage everyone whether it is a small project or a large project to go through that process.

Attorney Lentine stated it may be encouraged but it is not common practice for something of this size. I am just following the procedure that I have followed in the past. The first thing is you don't go in front of the Selectmen until you have the Special Permit transfer from the ZBA. The Selectmen want to make sure that everything is taken care of.

Mr. Berube stated since you need a permit from the Board of Health you should have come to us sooner than this and given us something to look at. That hasn't happened.

Attorney Lentine asked what would you like to look at. Is there anything that I can give you?

Mr. Berube replied you are subject to a plan review. I mentioned a few things in the memo to the Board of Appeal.

Attorney Lentine asked what kind of specificity do you want to see with the plans.

Mr. Berube replied you were provided with a guidance package that outlines what needs to be done. All the details are in the package.

Attorney Lentine asked Mr. Turco if he still had that package.

Mr. Turco replied yes.

Attorney Lentine asked is that it.

Mr. Berube replied that is a start.

Attorney Lentine asked then we will address the issue of the variance at another day or is that something that will be added.

Mr. Berube replied the plan review process needs to be started so that we can communicate.

Attorney Lentine asked Mr. Berube if we submit the plans and you find them satisfactory you maybe able to sign off the Common Victualer's License.

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Mr. Berube replied as I stated at the beginning of this hearing if you had submitted something to this office showing good faith that you were going to comply, I may have signed off on the application.

Attorney Lentine stated that he would have their engineer draw up a plan and submit them to the Board of Health. The only thing I have a problem with is raising the first floor and applying for a variance that was never needed before. I will meet with the Turco family and have their engineer draw up the plans. Hopefully Rich and I can meet and resolve the issues without coming before the Board again.

Mr. Reader made a motion to take this matter under advisement.

Mrs. Giroux seconded. So voted unanimously.

**Open Microphone**

Mrs. O'Rourke asked is there anyone here for open microphone tonight.

There wasn't anyone for open microphone.

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

The Board adjourned at 8:25 p.m.

Respectfully submitted,

Sandra Giroux  
Secretary

Joanne M. White  
Recording Clerk