

**BOARD OF HEALTH MINUTES**  
**May 2, 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, Richard Berube, Director, and Joanne White, Recording Clerk.

**ACCEPTANCE OF MINUTES**

Mr. Kane made a motion to accept the Meeting Minutes of April 4, 2011.  
Mr. Reader seconded. So voted unanimously.

**CORRESPONDENCE**

Mr. Berube explained that he had one item under correspondence that he would like to discuss with the Board. Mr. Berube informed the Board that he had received an email from Marlies Henderson regarding the proposed article for the keeping of hens. Jennifer Croce is the proponent of the article. Ms. Henderson is requesting that the Board of Health provide a copy of the memo that I had sent to the Planning Board to Town Meeting. I am looking for some direction as to how the Board would like me to handle this situation. Mr. Berube asked the Board if they would like to comply with her request or stay neutral.

Mrs. O'Rourke stated that since Jennifer Croce is present tonight she would give her the opportunity to speak to the Board about her proposal.

Ms. Croce provided the Board Members with an email that she sent to Marlies Henderson regarding the Zoning Amendment and Ms. Henderson's reply to her memo. She also included a copy of the Zoning By-law, Section 5, Regulations of Uses, Buildings and Structures.

Jennifer Croce, 26 Christina Avenue, Billerica identified herself. Ms. Croce explained that Ms. Henderson sent her an email on April 16, 2011 in regards to my article that prohibits roosters.

Ms. Henderson does own chickens and a rooster. I explained to her that I do not intend to remove that stipulation from my article. I have not heard from her since that time. She also stated in the email that she has the consent of the Board of Health to have chickens. Ms. Henderson is trying to discredit me and the work that I have done. I think if the article passes she will have to make some changes to her coop and get rid of the rooster. Her facts are incorrect. I have more documentation to support my facts along with the packet that I have provided the Board with.

Mr. Reader stated that if Ms. Henderson has chickens why is she trying to discredit you for proposing the by-law so that it will be legal to have chickens.

Ms. Croce replied because my article limits the number of chickens to six (6) and prohibits roosters because of the noise factor. Ms. Henderson does not agree with prohibiting roosters.

Mrs. O'Rourke asked if this article passes Town Meeting, who will determine how many chickens you could have.

Mr. Berube replied whatever is established in the Zoning By-law amendment. The number of chickens could be more or less than six (6) as mentioned in the proposed article.

Mrs. O'Rourke asked the Board Members if they had any questions for Ms. Croce. The Board Members did not have any questions at this time.

Mr. Berube asked the Board if they want him to distribute a handout at Town Meeting. My suggestion is that the Board should stay neutral in this matter because this is a zoning regulation. If this article passes, the Board will have the opportunity to promulgate regulations to ensure that this activity is done in a manner that protects public health and the environment. Ms. Croce is trying to make this a legitimate activity because it is already ongoing in the town and what she is proposing is not a bad thing.

Mrs. O'Rourke commented that the Health Department cannot recommend this Zoning By-Law change. So I do not think it would be in the best interest of the Board of Health to distribute a hand out at Town Meeting because some people will think we are for this article. It will be up to Town Meeting to decide whether or not the article passes. If this article passes then the Board of Health will do their job and the Animal Control Officer will have to be involved because she will have to inspect something she has not done before.

Mr. Berube stated that he wanted to be clear on the Board's position in case he was called upon to talk about this article. Mr. Berube explained that he would state that the Board of Health will remain neutral in this matter.

Mrs. O'Rourke stated that once Town Meeting has made their decision then the Board of Health will do their job. Mrs. O'Rourke asked the Board Members if they agree. All the Board Members agreed. Mrs. O'Rourke thanked Jennifer Croce.

**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 Report.

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

Mr. Berube stated that he would summarize the Health Activity Reports. Christine West, Public Health Nurse continues to administer all vaccines on a monthly basis. At the Health Fair on April 9, 2011 the LPN nursing students from Shawsheen Tech and Christine gave out 30 doses of Tdap vaccine to Billerica residents. Christine continues to work with the Upper Merrimack Valley Region 3 Coalition. Camp Inspections are in the planning phase. Christine and Gary will inspect the camps before a permit is issued.

Mr. Reader asked how do the residents know when the pediatrician comes to the Board of Health office.

Mr. Berube replied that we advertise in the Billerica Minuteman, on the Town of Billerica website and on BATV. People that do not have insurance take advantage of this opportunity.

Mr. Berube explained that Gary Courtemanche has completed sixty-nine (69) inspections. All Billerica Public Schools except Shawsheen Tech have been inspected. As you recall in the news there were issues about out of date food products in several school districts in Massachusetts. April Laskey, Food Service Director for the Billerica School Department has been on top of that issue. Any items that are found to be out dated are discarded immediately. If the Board would like, I can send a letter to Dr. Serio, Superintendent of Billerica Schools and the School Committee commending April Laskey and the Cafeteria staff on an outstanding job that they have been doing by staying on top of this situation. Gary has also been working with Steve Brown, Pre-Treatment Coordinator at the Billerica Sewer Department to inspect exterior grease traps. Gary has done a plan review on the new Planet Fitness that will be located in the Billerica Mall. Gary had a complaint at Richdale's Convenient Store, 161 Boston Road, North Billerica. There is loose trash and furniture behind the plaza. Gary sent an order to the owners to clean up the property and install a fence around the perimeter of the property so that the trash does not litter the neighborhood. A one hundred (100) dollar fine was issued. At this time the property has been cleaned up but the fence has not been installed.

Mr. Berube explained that Phavy Pheng has a total of thirty-eight (38) active cases, twenty-one (21) of the cases are new. Most of the complaints are for junk and debris. Two (2) complaints are for filling in the flood plain on Colby and Thoreau Streets. There was also a couple of smoking in the workplace complaints.

Mrs. O'Rourke asked if a letter was sent to Mr. Nickerson or Mr. Lyons regarding the illegal dumping of car tires in back of the Shawsheen Valley Technical High School.

Mr. Berube replied that a letter has not been sent out. Phavy met with Mr. Nickerson and he informed Phavy that he is going to take care of cleaning up all the remaining tires.

Mrs. O'Rourke explained that she is requesting that a report from the Animal Control Officer be submitted once a year when she inspects the livestock.

Mrs. Giroux asked if the car tires were going to stay behind the Shawsheen High School until Mr. Nickerson hires summer help.

Mrs. O'Rourke stated that the Billerica House of Correction inmates have already removed one hundred (100) tires.

Mr. Berube explained that at this time it is difficult to get rid of the rest of the tires because the water level is too high.

Mrs. O'Rourke explained that she asked Mr. Lyons if he could close off that area with a lock so that tires can not be dumped there.

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

Mr. Berube replied that at first he was living with his daughter however, she kicked him out. I don't know where he is living now.

Mrs. O'Rourke asked Mr. Berube if he has heard anything about 32 Sheridan Street.

Mr. Berube replied he has not heard anything or seen any plans.

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

**Substance Abuse Prevention Committee Report by Helen Devlin**

Mrs. O'Rourke stated the next item is the Substance Abuse Prevention Committee Report by Helen Devlin.

Mrs. Devlin explained that our Police Chief, Dan Rose started the Substance Abuse Prevention Committee four (4) years ago. Our goal is to educate and stay up to date on the current trends and to address a problem that is very prevalent in Billerica as well as every other community. We work with everyone we can to gain funding and information. We have town forums with guest speakers. Rich

Safier our current Chairman is retiring so we are seeking anyone that would be interested in being the chairman of the committee. Rich has done an incredible job. Our latest members are members of the community in recovery. We also have parents who have come forward who have lost children to drug overdose. Our committee has a lot of heart, a lot of determination, little money and lots of information. We go to the health fairs. Last week we assisted the Police at the prescription drug take back program. We try to be available to help out with anything that has to do with substance abuse. Currently we are working on a team health card, which is a card that will be given to anyone. It will have websites and emergency phone numbers for substance use and abuse. We have just completed another survey in the Billerica Schools to see how things have changed in the last four (4) years. The last survey was extremely concerning. Everyone wants to believe his or her town is free of this kind of activity but it is not.

Mrs. O'Rourke asked has drug abuse increased.

Mrs. Devlin replied yes. The big concern is prescription drug use. The target age for people who are dying is in there twenties. Drug use begins at age twelve (12). That is why we are addressing it in our schools. One graduate student from Billerica High that is in recovery has talked to the students in the Marshall Middle School and is now going to talk to the students in the Locke Middle School about her story. The young people in recovery are eager to do this because it helps them as well as they feel that they are giving back to the community.

Mrs. O'Rourke asked Mrs. Devlin if she works with the D.A.R.E. officer.

Mrs. Devlin replied yes she works with John Mullin and Mike Keough. Both are members of our committee. We started with seventeen (17) members. As a former Billerica High social worker I volunteered. The committee began with Stephen Moss, a psychologist who works with substance users, a social worker who works in another community who had great information; a businessman John Grey helped us to understand how the committee should work, parents, 2 School Officers and our current Chairman, Rich Safier. We are looking for new members to help address this issue in our town. I met with Mr. Berube and explained to him what the substance abuse prevention committee can offer. Any thing that comes before you in this area we are ready, willing and able to support. We will go to meetings. We will hand out pamphlets. We will carry signs. We are very committed and willing to do anything we can to do alleviate this problem.

Mrs. O'Rourke explained that this meeting is being taped and would be shown on BATV at a later date, so Mrs. Devlin this is a good opportunity to explain to the people what your needs are and how to contact you.

Mrs. Devlin stated we need people that are interested, people in recovery, people who understand that we have a serious problem in this town as does every community. We are no worse than any other community. We need your interest and support. Whatever you can do to help will be greatly appreciated. We also need help from small businesses for printing because we have no budget.

Mrs. O'Rourke suggested to Ms. Devlin that she let everyone know who to contact for more information.

Mrs. Devlin replied if anyone is interested in volunteering and needs more information, I can be reached at [devlins2@verizon.net](mailto:devlins2@verizon.net).

Mrs. O'Rourke thanked Mrs. Devlin for her presentation. Mrs. O'Rourke asked the Board Members if they had any questions.

Mr. Kane expressed an interest in seeing the results of the survey once it is finalized.

Mrs. Devlin replied that as soon as she the results are finalized she would contact the Board of Health office.

Mr. Berube informed the Board that he is working with the Police Department to set up a Lock Box for Unwanted Medication. A lock box has been given to the Health Department through a grant program and is free of charge. We have to work out the approvals with the Department of Environmental Protection and Drug Enforcement Agency and set up some rules as to what will be accepted. The box should be set up in the next month.

Mrs. O'Rourke asked will all prescription drugs be accepted.

Mr. Berube replied we need to establish some guidelines.

### **McFarland Cascade**

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

Mr. Berube explained that included in the Board's package is a copy of the response from GZA GeoEnvironmental, Inc. on behalf of McFarland Cascade and Eastern Terminals to the Department of Environmental Protection (DEP) regarding the Notice of Audit Findings (NOAF) and the Notice of Non Compliance (NON). GZA is not in agreement with what DEP has reported. I contacted DEP and no one has returned my call.

Mrs. O'Rourke asked is anyone doing any work at the site.

Mr. Berube explained that DEP claims that GZA has not done enough work regarding what the extent of the contamination is and also about analyzing the Risk Characterization. They need to revise their Notice of Activity and Use Limitation. GZA disagrees with the assertions by DEP. The only thing that GZA agrees with is that the Notice of Activity and Use Limitation needs to be revised. I will keep the Board apprised as to what happens. Also included in the Board's package is a copy of the Notice of Appeal against the Town regarding the Planning Board's decision for the Approval Not Required Plan (ANR Plan). I have spoken with the Town Manager, John Curran about meeting with Town Counsel to

discuss what legal action the Board could take because it appears that McFarland Cascade is reneging on what they promised the Board that they would do.

Mr. Reader asked how long could it take before the appeal is heard.

Mr. Berube replied that he is not sure however, if the court agrees with Eastern Terminals then it will come back before the Planning Board. It appears that McFarland Cascade does not want to do what they agreed to do.

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

### **Water Conservation Committee Update**

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

Mr. Kane explained that he has submitted an **unofficial** copy of the meeting minutes from the April 20th Water Conservation Committee meeting. The Committee recommended that new radio transmitters be supported to allow more accurate and timely water meter readings throughout the Town. With these transmitters all the water meters can be read in one day rather than taking weeks like it does now. We also have a water conservation fund, which is funded by the assessment of any new construction of bathrooms or bedrooms in Town whether it is a large apartment complex or an individual home. The money raised will be used to offset the cost of replacing or providing reimbursement to any individuals or agencies who are replacing older fixtures with newer water conserving fixtures. Any increase in use will be offset by the conservation. Warrant Article 26 will allow up to the value of that fund made available to reimburse any resident in the Town who wants to purchase new fixtures. We received our water usage permit from Department of Environmental Protection (DEP) and we are not in compliance with the amount of water we can take. Our usage is greater than 65 gallons of water per person per day, which means that we need to provide mandatory water conservation in town limiting the number of days that watering will be allowed. Our current Mandatory Stage 2 is not strict enough. A new by-law is being developed and will be ready for Fall Town Meeting. Our biggest concern is the fines that DEP could impose on the Town of Billerica.

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

Mr. Reader asked is the mandatory watering plan going to be the same as last year, odd/even.

Mr. Kane replied I do not know what the Selectmen decided. If it is odd/even it is still not in compliance with our water permit usage. Our by-law is not restrictive enough to meet our permit. The permit would allow watering 2 days per week. It could be any two (2) days. It would be up to the Town. There would have to be rules that are in compliance with two (2) days per week.

Mrs. Giroux asked how will that effect the large companies in Billerica.

Mr. Kane replied their water usage will be the same except if water is required for business purposes like running a car wash, livestock, golf courses, things where water usage is required for their livelihood. The watering of residential lawns would be limited to two (2) days per week.

Mrs. Giroux stated last year she noticed that a lot of the businesses were watering in the rain.

Mr. Kane replied that is an enforcement issue.

Mrs. Giroux asked who is the enforcement agency.

Mr. Kane replied that the enforcement is the Town By-law. It is up to the Police Department to enforce this by-law. The Police Department and the DPW Water Department can issue fines.

Mrs. O'Rourke thanked Mr. Kane for the update.

Mr. Reader complimented Dan on an outstanding report.

**7:15 p.m. Lynnway Auto Auction – 400 Charter Way – Request Amendment to Order of Conditions for Project Approval**

Mrs. O'Rourke stated the next item is Lynnway Auto Auction, 400 Charter Way, requesting an amendment to the Order of Conditions for Project Approval.

Attorney James Dangora, Jr. Shea, Dangora and Nelson, identified himself. Attorney Dangora, Jr. explained that he is representing Lynnway Auto Auction. Attorney Dangora, Jr. explained the issue before the Conservation Commission and the Board of Health is the use of ABC material, asphalt, brick, and concrete rubble. When it first became an issue I contacted our engineer, Todd Lobo of Beals Associates and he indicated to me that not only is ABC rubble material used regularly, it is actually encouraged by the Department of Environmental Protection (DEP). I did some research on the DEP website and found a guide entitled guide to using asphalt, brick and concrete rubble by MassDEP. DEP states that they do encourage the recycling and reuse of this ABC rubble. We are using material on site that is encouraged by DEP. According to the DEP publication it states that the ABC rubble has been crushed in accordance with their regulations and according to their conditions is not a solid waste. The crushed rubble could be used as a substitute for conventional materials for the base of driveways or fill. The solid waste division of DEP considers it to be clean fill. The reason it is encouraged is because DEP does not want this material to be found in landfills. In 2006, DEP banned the dumping of asphalt, brick and concrete material in landfills. Deloury Industries located in Dracut, MA provides the ABC rubble for this project. Deloury Industries is present tonight to explain the process that they use. What comes on to the site is regulated, what is stored on the site is regulated and what goes out of the site is regulated. They have been in business in Dracut since 2006. Deloury Industries is permitted by the Dracut Planning Board through the Site Plan Special Permit process for their recycling process. They are operating under an order of conditions issued by the Dracut Conservation Commission, which permits them to store their material within fifty (50) feet of resources. We appeared before the



Conservation Commission last week and after much debate they concluded that for purposes of this project they would consider the use of the ABC rubble to be clean fill. Jon Metivier, a contractor and a member of the Conservation Commission commented that he uses ABC rubble a good deal of the time. Paul Hayes another member of the Conservation Commission explained that in May 2010 there were flooding conditions and the ABC rubble material was used to hold back streams and rivers during the flooding. The Board of Health's condition talks about the prohibition about using brick as fill on the site. Brick is a component of the ABC rubble. The brick is crushed and recycled down to an inch to 1¼ inches. Mr. Berube received a memo from DEP regarding the inspection that was done on the site on April 28, 2011. DEP stated that the material on site is consistent with MassDEP's guidelines for the recycling of ABC material. During the Conservation Commission's hearing there was some discussion about the use of asphalt in the ABC rubble. Less than 5% of ABC rubble is recycled asphalt. A good deal of the site will be paved. The ground water recharge will be redirected to six (6) sites within the pavement. The goal is to use the virgin material in and around the recharge area. ABC rubble is widely used and is a highly encouraged product. Our engineer, Todd Lobo, Beals Associates and Dave Deloury from Deloury Industries are present to answer any questions that the Board Members may have.

Mrs. O'Rourke asked the Board Members if they had any questions for Attorney Dangora. The Board Members did not have any questions.

Mr. Berube stated that Attorney Dangora has summarized the issue quite well. John Borgesi, the Board's consultant from Woodard & Curran is present to talk about this matter.

Mrs. O'Rourke asked if someone from Deloury Industries could explain the process before John Borgesi gives his presentation.

David Deloury, Deloury Industries, Andover, MA identified himself. Mr. Deloury explained that he has been recycling since 1987/1988. Mr. Deloury explained how his company started and what the process included. We are part of the Construction Material Recycling Association (CMR) and we have multiple permits. We received our first permit for this type of operation in the late 80's, in Andover MA. We started in Andover, MA and relocated to a site in an existing quarry in Dracut, MA.

Mrs. O'Rourke asked Mr. Deloury to explain the recycling process and what it consists of.

Mr. Deloury explained that asphalt, brick and concrete are put through crushing plants, then it is screened and broken down into 1 ½ inch pieces per Mass State spec for gravel. Our material does meet the Mass State spec road base gravel M103, which has to do with the sieve analysis and how much of it passes through the different sieves. We have processed over five (5) million yards of material in the last twenty (20) years.

Attorney Dangora asked Mr. Deloury to explain to the Board the percentage of what the final product is.

Mr. Deloury explained that the Mass State spec fines are difficult to meet. If you take a handful of loam and you can make a ball there are fines in the product. If you take a handful of good gravel product you should not be able to make a ball it should fall through your hands so that means there are no fines in the product. Mr. Deloury explained what is needed to meet the Mass State specs. Our product is made up of a lot of virgin material to meet that spec. 5% is brick broken down to 1-1 ½” pieces and less than 5% is pavement. It is really a gravel product.

Mrs. O’Rourke asked when this material is put in a hole and leveled off do you add water so that the rubble will be compact.

Mr. Deloury replied no, it packs like gravel.

Attorney Dangora asked Mr. Deloury to explain some of the places that currently use this material. Attorney Dangora stated that the Old Purity site and the Department of Public Works (DPW) yard in Wilmington use this material.

Mr. Deloury replied there is not a town or a construction company within a fifty (50) mile radius that hasn’t used this product.

Mr. Berube explained that in the package that was emailed to the Board Members there are several places in Billerica that use this material, Charnstaffe Lane, Salisbury Hills, Dunham Road, Brightview Senior Center, Nicholas Common, Swanson Meadows and the Billerica DPW.

Mr. Deloury explained that Deloury Industries has been contracted by the Billerica DPW to remove their ABC at times over the last 5 or 6 years.

Mrs. O’Rourke asked the Board Members if they had any questions. The Board Members did not have any questions.

John Borgesi, Woodard & Curran identified himself. Mr. Borgesi explained that a month ago Markus Pinney, Director of Environmental Affairs along with a representative from Woodard & Curran were conducting a site inspection and identified some brick material. Asphalt, brick and concrete being used is a violation of both Order of Conditions. Markus identified a piece of timber, a piece of plastic and a pipe. At that time we had a discussion with Deloury Industries regarding the use of the material and where it had been used before and are there any environmental impacts from the material. Markus was extremely concerned because of the one hundred (100) foot buffer zone and there are some sensitive receptors in the area. We did request that additional environmental information be submitted. Todd Lobo of Beals Associates and Dave Deloury, Deloury Industries submitted a three hundred twenty-five (325) page report. This report included some important information of the actual processing procedure. Going through all the information that was submitted, there were two (2) items that we had requested in our email that wasn’t provided. Based on the conversations that Woodard & Curran had with Rich Berube, Director of Public Health and Markus Pinney I prepared a letter on April 29, 2011 requesting the information that was not included. They submitted the information in a short time. Two (2) items

were not included. The first is a letter from the MassDEP Wetlands Division. We were concerned with the environmental impacts with the use of this material. That was not submitted at the Conservation Commission hearing. Based on the material submitted brick and concrete have a minimal environmental impact. Asphalt is more of a potential concern. Mr. Borgesi explained that Beals Associates submitted a study that was done in Florida and all the tests were negative except for one that detected lead. They attributed that to the vehicles dripping oil onto the asphalt and coming from the asphalt itself. Based on the results of the asphalt study there were no potential impacts from leaching. One of the things Rich was concerned with was the processing and the consistency. The rubble is made up of 5% asphalt, 5% brick and 90% concrete and the virgin material that is mixed in. The Conservation Commission was satisfied. The only concern that the Conservation Commission has is the potential for groundwater and any impact. Mr. Pinney made the recommendation to do some groundwater and surface water environmental monitoring for a period of not more than five (5) years post-construction to evaluate if there are any impacts to the groundwater or surface water related to the use of the ABC rubble as fill. A minimum of one (1) upgradient and (1) downgradient well would be installed and a surface water sample would be collected once a year annually for five (5) years after to evaluate for any impacts. Mr. Berube suggested that a condition be included. The condition would be to install one (1) upgradient and one (1) downgradient well and collect surface water samples for five (5) years.

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

Mr. Kane stated if we place the sample site upgradient and downgradient and the sample comes out positive we now have acres of paving with the potential of lead contamination in the watershed. My concern is that we would be asking those folks to tear up and remediate 22 acres of pavement. Is the sample size of one (1) upgradient site and one (1) downgradient site going to be adequate for 22 acres of potential contamination. How do you remediate that?

Mr. Deloury stated you can put monitoring wells wherever you want. Mr. Deloury explained the infrastructure on the site. How are you deciphering on a product that is sealed underneath three (3) inches of pavement. The water is going to be running on top of the pavement into the water system. You are measuring water that is flowing on top of the pavement, which is groundwater. You are not measuring our product.

Mr. Borgesi explained we are looking to measure groundwater that comes up and then goes down with the fluctuations. Two (2) years ago when we had the big floods, groundwater was at its highest. Groundwater is going to come up and submerge this film material and then dissipate down. That is what we want to try to monitor. The asphalt parking lot does create a cap over this. It reduces significantly any amount of water that would infiltrate through this material and then into groundwater. The Conservation Commission's concern is about the groundwater coming up and wetting the material and then going back down and how that would affect the ground.

Mr. Berube explained that by no means will the monitoring of the data that is collected be conclusive. It might warrant further investigation. It may indicate a failure of the stormwater management system. The monitoring will only give us some assurance that the material that is being

used underneath the asphalt is not going to have any long-term environmental impact.

Attorney Dangora explained that at the Conservation Commission hearing last week there was a discussion about monitoring and after much debate the vote concluded that the monitoring was not necessary. We discussed the issues. The brick and concrete has minimal if any environmental impact. The other issue that came up was that the Dolly Brook stream is an intermittent stream and it does dry out. Another issue that was brought about the testing was how do we really know where the water comes from. There are multiple sites in the area. In the final analysis we know that brick and concrete have minimal or no environmental impact. The Conservation Commission has worked through this issue and ultimately concluded that this fill is clean fill for purposes of this project and opted not to go with the monitoring. We ask that this Board make the same consideration.

Mrs. Giroux asked of all the sites using this material in Billerica are they being tested.

Attorney Dangora replied no.

Mr. Reader asked is testing or monitoring of this material going on anywhere in Massachusetts.

Mr. Deloury replied that we have thousands of customers and have never done any testing.

Chris Rider, Deloury Construction identified himself. Mr. Rider explained that DEP regulates the recycle site in Dracut. In that approval they did not require monitoring of that site.

Attorney Dangora explained that DEP wanted Deloury to extend their hours to produce as much material as they could to abate the floodwaters in the spring of 2010.

Mrs. Giroux stated that she did not quite understand the process. If you are testing the water how do you know the groundwater coming up versus water going down?

Mr. Borgesi explained where and how the wells would be positioned through the pavement. The wells would be installed downgradient side through the asphalt, which has a cap. Some of wells would be installed upgradient. And then sampling and testing would be done.

Mrs. Giroux asked have any tests ever been done that were conclusive.

Mr. Borgesi replied that he did not know.

Mr. Rider explained that the DEP regulation has been in effect since 1993. The DEP data goes back to 1993 and there is no data that states that this material is a problem. The asphalt, brick and concrete have been permitted to the site. All we are doing is recycling the material as DEP has allowed. Our sample size of the recycled material is very small.

Mrs. Giroux stated you could say that the test is inconclusive.

Mr. Rider stated that there are no studies that test this material.

Mrs. O'Rourke asked is there a problem with the bridge.

Attorney Dangora replied that was a temporary construction remediation. They are in the process of taking care of that. It has nothing to do with the use of this material.

Mr. Borgesi stated that there was an issue with clearing more of the resource area than necessary. Beals Associates drafted a contract for the repairs to the resource area.

Mr. Berube explained that it had to do with the limits of work. Mr. Berube stated that the Board has heard from Attorney Dangora, Deloury Industries, John Borgesi, the Board's Consultant and as Attorney Dangora mentioned a letter from DEP is included. DEP does not see an issue with the use of this material because it is all going to be capped under asphalt so it should not present a problem. I do not have a problem with amending the condition for the use of this material with the exception of around the infiltration areas. As far as any kind of monitoring program that is the Board's decision. I think the monitoring program was proposed as a means of assurance for the Town so that there will not be any problems down the road. Because of the wide use of this material monitoring may be unnecessary.

Mrs. Giroux made a motion to grant the request to amend Condition #13 of the Order of Conditions #10-28-38-026 except around the infiltration areas for Lynnway Auto Auction located at 400 Charter Way as follows:

#### **FINDINGS OF FACT**

- 1) Condition #13 is amended to allow the use of crushed asphalt, brick and concrete ("ABC") material as suitable fill material with the following exception:
  - a) No ABC material shall be used to back fill within a fifteen (15) foot horizontal distance of the infiltration structures. Fill material used to backfill the infiltration structures shall be comprised of clean granular soil, free from manmade and other deleterious substances.
- 2) This document shall not take effect until it is properly recorded at the Registry of Deeds and a certified copy of this document is returned to the Board of Health office indicating a marginal reference was made on the original deed.

Mr. Reader seconded. So voted unanimously.

#### **7:30 p.m. David J. Segal – 520 Boston Road – Appeal Hearing for Notice of Violation and Order for Correction**

Mrs. O'Rourke stated the last item on the agenda is David J. Segal, 520 Boston Road, Appeal Hearing for Notice of Violation and Order for Correction.

Mr. Berube explained that Mr. Segal sent a letter requesting that the hearing be postponed until the next meeting due to a scheduling conflict.

Mr. Reader asked if any progress has been made to clean up the area.

Mr. Berube replied Mr. Segal is trying to clean up the area however he has a tenant that refuses to use the trash containers that have been provided to keep the area clean. So Mr. Segal is in the process of evicting the tenant.

**Open Microphone**

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

No one was present for open microphone.

Mr. Kane asked what is the status of the Farmers Market and their applications.

Mr. Berube replied that Health Agent, Gary Courtemanche is working with their representative. The market will be located at the Council On Aging. The Farmers Market Committee is still working out the details such as parking and trash disposal.

Mr. Reader asked what day of the week will the Farmers Market be held.

Mr. Berube replied on Mondays.

Mr. Kane asked does our regulations adequately cover this type of activity because it is different than what we have done.

Mr. Berube replied yes, however this is the first time we have come across something like this. There are Farmers Markets in other towns. Gary is working with them to make sure that there will be no issues.

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

The Board adjourned at 8:15 p.m.

Respectfully submitted,

Sandra Giroux  
Secretary

Joanne M. White  
Recording Clerk