

**BOARD OF HEALTH MINUTES**  
**July 11, 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**

Mrs. Giroux made a motion to accept the Meeting Minutes of June 6, 2011.  
Mr. Kane seconded. So voted unanimously.

**BOARD OF HEALTH BUSINESS**

**Reorganization**

Mrs. O'Rourke stated the first item under Board of Health Business is Reorganization of the Board Members. At this time Mrs. O'Rourke turned the meeting over to the Secretary, Mrs. Giroux.

Mrs. Giroux made a motion to leave the structure of the Board of Health the same, Marie O'Rourke, as Chair, Robert Reader as Vice Chair and Sandra Giroux, as Secretary.

Mr. Grady seconded. So voted unanimously.

**Health Department Activity Reports**

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

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

Mr. Berube stated that he would first summarize Health Agent, Phavy Pheng's report. The owner of 26 Patten Road is in the process of repairing the failing septic system. The house at 141 Pond Street is going to foreclosure and the house is currently for sale.

Mrs. O'Rourke asked if they could talk about 78 Pinedale Avenue. Mrs. O'Rourke explained that she had a visit from a neighbor concerning the strong odor emanating from 78 Pinedale Avenue. Even though Mr. Mitchell is pumping the system once a month there is still a strong odor coming from that property. She told me that the smell was so bad that they could not go in their backyard on Father's Day. I discussed this situation with Mr. Berube because I wanted to know if maybe the Board could force Mr. Mitchell to fix the system and then when sewer becomes available he could request a waiver so that he does not have to connect to town sewer. Mr. Berube explained to me that because of the location of his house it would cost a small fortune to install a new septic system.

Mr. Reader asked when will 78 Pinedale Avenue be able to connect to town sewer.

Mr. Berube explained that Breckenridge Estates is under construction. Once the site work and the infrastructure are in place I will discuss this situation with the Department of Public Works and ask if we can do an emergency connection.

Mrs. Giroux asked approximately how long are we talking about.

Mr. Berube replied the earliest will probably be this fall.

Mrs. Giroux asked can we order him to pump the system twice a month since once a month is not enough.

Mr. Berube replied that he has visited the site during the day time and he has not smelled an odor. According to the complainant it usually smells worse at night.

Mrs. Giroux asked if the Board could request that the system be pumped twice a month.

Mr. Kane suggested that someone should go out to the site after the meeting to validate the complaint.

Mrs. O'Rourke replied that she would drive by 78 Pinedale Avenue after the meeting.

Mr. Berube explained that Phavy received a noise complaint that had been closed. A resident complained about the noise regarding a business on Billerica Avenue. The generator was moved behind the building to resolve the case initially and the case was closed. They ran into some problems with losing voltage so the generator was moved back to the original location. A new complaint was received so the case has been reopened and we are working with the business to put up some noise barriers. The business is going to work with National Grid to see if the generators could be eliminated all together. Mr. Berube explained that a new noise complaint was reported coming from the Market Basket at 496

Boston Road. The HVAC unit on the roof is currently being worked on, hopefully that will resolve the matter.

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

Mr. Reader asked how long a resident is allowed to keep a bagster on their property. Shouldn't there be a time limit on how long they can keep it on their property?

Mr. Berube explained that when the bagster is bought the cost is reasonable. However when a person calls to have it picked up the cost is quite expensive and they decide to wait. Nobody likes to pay to get rid of trash.

Mr. Berube explained that Gary Courtemanche has completed seventy-two (72) total inspections, 5 complaints, 40 routine, 5 re-inspections and 17 site visits for septic and conservation inspections, 1 Farmers Market (11 vendors) and 4 Food Service Establishments grease traps. Gary is involved in other areas besides food sanitation. Gary is doing the beach sampling and inspecting the summer recreational camps. Gary is also working with the 99 Restaurant on Lexington Road to develop a Best Practice Program to be used to reduce the amount of grease going into the traps and town sewer. If this program is successful at the 99 Restaurant it will be implemented in the other large restaurants in town. A complaint was received from a resident that Berman's Gas Station sold cigarettes to a minor. This complaint was forwarded to the Healthy Communities Tobacco Control Program. The Health Department received an anonymous complaint regarding someone working at Dunkin Donuts that had open sores on her hands and arms. Gary investigated the complaint and did not see any open sores and determined that a previous life style had caused the scars on her arms and hands. Gary also investigated the noise complaint at Market Basket with Phavy.

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

Mr. Berube stated that the last activity report is from Christine West, Public Health Nurse. Christine continues to administer all vaccines on a monthly basis and continues all communicable disease reporting and TB testing. There have been two (2) reported cases of the measles. The first case was reported at the Billerica Courtyard by Marriott. Christine vaccinated about 50 employees and disseminated the necessary information. The second case was reported at NEXX Systems on Middlesex Turnpike. Christine vaccinated about 80 employees and again did the decimated the necessary information. Included in the Board's package is a copy of the CDC Measles Vaccine Information and a Global Update about the outbreak abroad.

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

Mr. Kane stated that there is a discrepancy between Gary's report and Christine's report regarding the number of summer camp inspections that were conducted and reported on.

Mr. Berube explained that the reason for the discrepancy is the time when the reports were written. Gary's report was completed before July 1, 2011 and Christine's report was completed on July 11, 2011 because she was on vacation. The reports are usually compiled a week before the meeting.

**Mosquito Control Program Update**

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

Mr. Berube explained that included in the Board's package is a copy of the Surveillance Summary dated July 4, 2011. This report has been updated and the Number of West Nile Virus (WNV) Positive Pools is 2. One (1) case was reported in Boston. The Billerica area is at low risk for the WNV.

Mr. Berube asked if the Board Members had any questions. The Board Members did not have any questions.

**7:15 p.m. Mark Young – 32 Sheridan Street – Request Waiver of Regulations for work within the Flood Plain**

Mrs. O'Rourke stated the next item is Mark Young, 32 Sheridan Street, requesting a Waiver of Regulations for work within the Flood Plain.

Mr. Young provided a large copy of the proposed plans for the new dwelling at 32 Sheridan Street for the Board Members to review.

Mark Young, 83 Tercentennial Drive, identified himself. Mr. Young stated that he is representing Rita Head, 32 Sheridan Street. Mr. Young explained that at the last Board of Health meeting he presented a brief summary of this project. A Waiver of Regulations has been filed with the Board of Health and the fees have been waived. This project is known as Home Again Billerica regarding the demolition and construction of a new home at 32 Sheridan Street. The family was flooded out in March 2010. Mr. Young asked if the Board Members had any questions.

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

Mr. Berube explained that the first floor elevation is going to be at 102.5 which is well above the flood plain elevation. The foundation will only be a crawl space with flood vents installed so that flood waters can enter and exit. The proposed plan is exactly what the Board would want for a house that is going to be reconstructed in the flood plain. The building is going to be flood proof.

Mrs. O'Rourke asked where the electrical panels would be located.

Mr. Young replied on the first floor.

Mrs. O'Rourke asked how the dwelling will be heated.

Mr. Young replied by gas, forced hot air. The unit will be located on the first floor. No utilities will be located in the crawl space.

Mrs. O'Rourke asked has any work been done on the site.

Mr. Young replied one container has been dropped off to clean up the yard only.

Mrs. O'Rourke asked if all the contractors involved in this project are ready to work on this project once it is approved by the Board.

Mr. Young replied yes. 85% of the subcontractors are from Billerica. This is mostly a Billerica project.

Mr. Reader asked are you still waiting to appear before the Conservation Commission.

Mr. Young replied yes. We were formerly on the agenda in June, however, since we did not have the Board of Health decision, the hearing was continued to Wednesday, July 13, 2011. I will go before the Conservation Commission to explain the proposed plans on July 13, 2011.

Mr. Reader asked is that the last hearing you will need before you start construction.

Mr. Young replied yes and then we go forward with the permitting process. First, I will file for a demolition permit.

Mrs. O'Rourke asked is this going to be a ranch style house.

Mr. Young replied yes, it is a slab ranch house with no foundation that was built in 1910.

Mrs. O'Rourke asked what style is the proposed house.

Mr. Young replied it is going to be a two story house. In order to minimize and reduce the footprint of the existing structure we went with a smaller footprint and a second story. It is less expensive to go with a two story dwelling for the excavation, the foundation and the roofing. We have also reduced the size of the driveway to reduce the impervious surface. We reduced the footprint and reduced the impervious surface.

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

Mr. Kane commented that on your application it states that the application is being reviewed by the Conservation Commission and the Department of Environmental Protection (DEP). Why is the application being reviewed by DEP?

Mr. Young replied that DEP received a copy of our Notice of Intent because we are working in the flood plain. This project will be monitored. We are not working in the one hundred (100) foot buffer zone. We applied for a DEP number.

Mr. Kane asked what is the timeline for DEP's response.

Mr. Young replied that he did not know.

Mrs. Giroux asked are all the subcontractors licensed and insured. There are no workers comp issues. Are you sure that there is no liability issues that the town could be facing.

Mr. Young replied that these construction companies have all been in business for years.

Mrs. Giroux stated I know you will be trying to complete this project in a short amount of time so you will not be taking any shortcuts and you will be complying with the town by-laws for construction.

Mr. Young replied yes.

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

Mr. Berube explained that the new proposed house will be flood proof, the first floor will be above the flood plain and all the utilities will also be above the flood plain. I do not see any issues with granting the waiver.

Mrs. O'Rourke asked if any abutters were present.

Anthony Ventresca, 31 Sheridan Street identified himself. Mr. Ventresca stated that he was present to make sure that all the construction work will be done properly so that the water would not be pushed across the street. There are major drainage issues in that area. There was an issue with the property behind me and there is some runoff that comes from D Street down to Sheridan Street. I want to make sure that the proposed house will be two (2) feet above the high water table. I am not opposed to this project. I just want to make sure that the work is done properly.

Mr. Berube replied that this will be an improvement to the neighborhood and will increase the flood storage so it should lessen the flood waters in that area.

Mr. Kane made a motion to grant a Variance of the Billerica Board of Health Rules and Regulations, Chapter 5, Section 5.5.005 (1) to raze the existing single family dwelling at 32 Sheridan Street and construct a new single family dwelling in the Flood Plain based on the following findings of fact and pursuant to the following conditions:

**FINDINGS OF FACT**

- 1) The work described in the applicant's request is within an area subject to protection under the Billerica Health's Rules and Regulations, Chapter 5, Section 5.5.005 (1).
- 2) The applicant proposes to raze an existing single family dwelling located in the Flood Plain in order to construct a new single family dwelling. The new construction shall comply with the National Flood Insurance Program (NFIP) and the State Building Code requirements for construction in the Flood Plain. All utilities in the proposed dwelling will be located above the flood plain. The proposed dwelling will be serviced by town sewer and water.
- 3) Flood vents will be installed in the new structure to allow for the entry and exit of flood waters. The lowest habitable floor (living space) shall be located at or above the FEMA base flood elevation of 99 (NGVD 1929) or 98 (NAVD 1988).
- 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 1, 2, 3, 4, 5, 6, 9, 10, 11, 12, 13, 14, 15, and 25 in accordance with the Board of Health regulations and Special Conditions:

- A) All construction must be in accordance with plans submitted for review and approval, prepared by H-Star Engineering Inc. dated May 23, 2011 and stamped by Bernard H. Hamill, RPE#32401, RLS#33595.
- B) All utilities in the proposed dwelling shall be located above the FEMA base flood elevation of 99 (NGVD 1929) or 98 (NAVD 1988).
- C) Chemical and petroleum products stored in the garage, shall be securely placed on shelves three and a half (3 1/2) feet above the garage floor.

Mrs. Giroux seconded. So voted unanimously.

**7:20 p.m. Brian Powderly – 10 Olde Hillside Avenue – Request a Variance for work within the Flood Plain**

Mrs. O'Rourke stated the next item is Brian Powderly, 10 Olde Hillside Avenue, requesting a Variance for work within the Flood Plain.

Mr. Dresser provided the Board with a large drawing of the property at 10 Olde Hillside Avenue.

Stephen Dresser, Dresser, Williams & Way, Inc. identified himself. Mr. Dresser explained that he was representing Mr. Powderly. Mr. Powderly would like to construct a 12 ft. x 16 ft. addition off the rear of his home. In 2005, Mr. Powderly demolished the existing home and constructed a new home. At that time the new home added an additional 48 cubic feet of flood storage than before. This plan will use 15 cubic feet of that. I filed with the Conservation Commission. We did not have to file with DEP because it is more than one hundred (100) feet from the wetland and it is more than 50 feet from the FEMA Flood Plain. It is a small addition. Everything will be above the flood plain. Mr. Dresser asked if any of the Board Members had any questions that they would like to ask Mr. Powderly.

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

Mrs. Giroux asked why this room wasn't added on when the new house was constructed.

Brian Powderly, 10 Olde Hillside Avenue identified himself. Mr. Powderly explained that his in-laws have run into some hard times and we agreed to put on an addition for them.

Mr. Kane asked Mr. Dresser if he could clarify what the memo is referring to regarding the proposed addition being constructed within 15 cubic feet of the Green Engineering Flood Plain.

Mr. Dresser explained that 213 cubic feet of the original home was in the flood plain. When the new home was constructed it was constructed within 165 cubic feet of the flood plain, therefore adding 48 cubic feet of flood storage. This addition will be within 15 cubic feet of the Green Engineering flood Plain, thus only having 33 cubic feet of storage instead of the current 48 cubic feet.

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

Mr. Berube replied that there will be a minor impact to the flood plain. The Board granted a variance back into 2005 when the house was originally built. At that time they moved the house further out of the flood plain. The basement floor is above the flood elevation. I don't see any problem with granting the variance for the addition.

Mr. Kane asked even though it is a relatively small volume, is there any way you can compensate for the loss.

Mr. Dresser replied it is a small volume the only thing we could do is dig it out which would take away from the yard and we really don't want to do that because they have children.

Mrs. Giroux asked is this going to be a legal in-law apartment, do we have to make some restrictions for this apartment.

Mr. Dresser explained that it is not an in-law apartment it does not have a kitchen it will only have a bedroom and a sitting area.



Mr. Berube replied is it separate from the house.

Mr. Dresser replied it is not separate from the house.

Mrs. Giroux stated so it can't be rented out separately.

Mrs. O'Rourke asked will it have its own entrance and will there be a door from the main house to the apartment.

Mr. Powderly replied the addition will have its own entrance going out to the back yard and there will be a door from the existing house to the addition.

Mr. Dresser asked Mr. Powderly if there is a kitchen.

Mr. Powderly replied that he is planning on having a small kitchen area.

Mr. Dresser stated that was the first time he heard there were plans for a kitchen.

Mr. Berube commented that 12 ft. x 16 ft. is not very large.

Mrs. O'Rourke asked if any abutters were present. No abutters were present. Mrs. O'Rourke asked if anyone else had any questions.

Mr. Reader made a motion to grant a Variance of the Billerica Board of Health Rules and Regulations, Chapter 5, Section 5.5.005 (1) in order to construct an addition at 10 Olde Hillside Avenue in the Flood Plain based on the following findings of fact and pursuant to the following conditions:

**FINDINGS OF FACT**

- 1) The work described in the applicant's request is within an area subject to protection under the Billerica Health's Rules and Regulations, Chapter 5, Section 5.5.005 (1).
- 2) The applicant proposes to construct an addition on the rear of the existing dwelling. A portion of the addition is located within the Green Engineering Flood Plain (GEFP) as delineated on GEFP Map #'s 52 and 53. The addition is located outside the FEMA Flood Plain.
- 3) Previously, the Board of Health granted a variance in 2005 to raze an existing single family dwelling and construct a new single family dwelling within the GEFP. The newly constructed dwelling decreased the loss of flood storage from the original dwelling by 48 cubic feet. The proposed addition will only fill 15 cubic feet of the GEFP. The proposed construction will not negatively impact the flood plain.
- 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 1, 2, 3, 4, 5, 6, 9, 10, 13, 14, 15, and 25 in accordance with the Board of Health regulations and Special Conditions:

- A) All construction must be in accordance with plans submitted for review and approval, prepared by Dresser, Williams & Way, Inc. dated May 23, 2011 and stamped by Joel Williams, RPE#29522.
- B) Erosion and sediment control measures shall be implemented and maintained in all areas disturbed by construction activity including but not limited to construction and waste material storage areas. Erosion and sediment control structures shall be installed prior to beginning construction.

Mrs. Giroux seconded. So voted unanimously.

**7:30 p.m. Town of Billerica – Middlesex Turnpike Pump Station Upgrade Project – Request Waiver of Regulations for work within the Flood Plain**

Mrs. O'Rourke stated the next item is Town of Billerica, Middlesex Turnpike Pump Station Upgrade Project, requesting a Waiver of Regulations for work within the Flood Plain.

Mr. Hazlett provided the Board with a large photo of the plans.

Tom Hazlett, Project Engineer for Woodard & Curran representing the Town of Billerica Department of Public Works, identified himself. Mr. Hazlett stated that the request is for a Waiver of Regulations of the flood plain by-laws upgrade of the existing Middlesex Turnpike Sewer Pump Station in the parking lot of the Micozzi Beach Recreation Area. Mr. Hazlett explained all the upgrades that would be done to the pumping facility. The only modification we are doing to the building is a new roof. Other proposed site work will include replacing the doors, windows, a new vinyl fence, and underground electrical conduits, installing a portable generator for emergencies, a sewer by-pass connection, repaving the driveway in front of the building and putting gravel around the building. The site is located partially within the Green Engineering Flood Plain and outside of the FEMA flood plain.

Mrs. O'Rourke asked if the Board Members had any questions. The Board Members did not have any questions. Mrs. O'Rourke asked Mr. Berube for his comments.

Mr. Berube stated that the flood plain does not exist anymore. It has been altered over the years. If you compare the photo with the flood plain maps there is a huge difference. I see no problem with granting the waiver.

Mr. Kane made a motion to grant a Waiver of Billerica Health Regulations, Chapter 5, Section 5.5.005 (1) (2) to allow the construction of upgrades to the Middlesex Turnpike wastewater pumping station located in the Micozzi Beach Recreation Area across from Marshall Street within one hundred (100) feet of the Flood Plain based upon the following facts and subject to the following conditions:

**FINDINGS OF FACT**

- 1) The work described in the applicant's request, and as per plan submitted by the Billerica Department of Public Works, is within an area subject to protection under the Board of Health's Rules and Regulations, Chapter 5, Section 5.5.005(1)(2).
- 2) The applicant proposes to construct upgrades to the pumping facility including new pump motors, piping, sluice gates, grinders, valves, control panels, electrical panels and miscellaneous cleaning. Proposed site work will include the construction of a new roof, emergency generator, sewer bypass connection, semi-private vinyl fence surrounding the station, two concrete equipment pads, electrical conduit, landscape gravel yard and asphalt paved driveway in front of the pump station.
- 3) The Middlesex Turnpike Pump Station is located in the Micozzi Beach Recreation Area across from Marshall Street. The pump station is located within the Green Engineering Flood Plain (GEFP) as delineated on GEFP Map #88. However, the development of the Micozzi Beach Recreation Area has altered the GEFP. The pump station does not lie within the FEMA Flood Plain.
- 4) Previously, the Board of Health granted a Waiver of Regulations at its meeting of April 7, 2008 for work within the Flood Plain at this site. The Pump Station Upgrade Project is critical to the maintenance of the municipal sewer system in the Nutting Lake area. There will be no loss of flood storage as a result of the proposed work.
- 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 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 Woodard & Curran, dated July 2011 and stamped by Thomas F. Hazlett, RPE#46482.

Mr. Grady seconded. So voted unanimously.

**7:40 p.m. Ashraf and Shamim Dahod – Rangeway Road Cemetery Project - Request Project Approval**

Mrs. O'Rourke stated the last item is Ashraf and Shamim Dahod, requesting Project Approval for the Rangeway Road Cemetery Project.

Mr. Nelson provided the Board with a large plan of the proposed cemetery site, for review.

Stephen Nelson, Shea, Dangora and Nelson identified himself. Mr. Nelson explained that he is representing the applicants, Ashraf and Shamim Dahod, the owners of the property. Mr. Nelson stated that the applicants came before this Board a year ago. At that time Attorney Lentine presented a request to the Board to approve this site for cemetery use. The Board voted to approve the site and the request was also approved at Town Meeting. This site is approximately seventeen (17) acres. Originally a subdivision was proposed for this site. That project was abandoned when blue spotted salamanders were discovered in one of the ponds. Subsequent to that a couple purchased the property to construct a 4 or 5 bedroom single family home on the site. However, they ran into financial difficulties and decided to sell the property. Ashraf and Shamim Dahod bought the site to use as a cemetery. Over the past 10-12 months we have been going through the process of obtaining permits from the Division of Fisheries and Wild Life because of the blue spotted salamanders on the site. Mr. Nelson pointed to the plans and explained the area that would be used for the proposed cemetery site. Mr. Nelson pointed to the plans and showed the piece of property that Conservation owns. Mr. Nelson pointed to an area where an easement would be constructed so that Conservation could access their property. The applicant is going to give the Town of Billerica a conservation restriction on 15.26 acres of land, so that land will be restricted in perpetuity. I drafted the conservation restrictions. The Division of Fisheries and Wild Life and the Conservation Commission approved the restrictions. Under the Towns stormwater management by-law we are going to disturb a little more than an acre of land. We need a permit from the Board of Health to do that. We met with the Board of Health Director, Richard Berube and he suggested that a peer review be performed to examine the proposed construction site for cemetery use. We met with Phil Paradis, BETA Group and he expedited the review. Mr. Williams will give a presentation describing the improvements that are being recommended. There will be an impervious driveway that will service the cemetery. We are asking that the Board approve the project this evening. There will be approximately three hundred (300) lots that will service the community members of the Mosque on Rangeway Road. The Mosque community will own the cemetery.

Joel Williams, Dresser, Williams & Way, Inc., identified himself. Mr. Williams explained that this project was before this Board several months ago. The project was submitted for a peer review. Phil Paradis, BETA Group reviewed the project and submitted some comments. I responded back to Mr. Paradis with additional comments. Many of those comments have been addressed and some comments have been added to the plan. The Board of Health also had some issues that we addressed at a meeting in the Board of Health office on Monday July 11, 2011. The comments in the letter dated June 24, 2011 have all been addressed with the exception of a recommendation that was made regarding some re-grading of the entry road so that a portion of the retaining wall could be eliminated. Mr. Williams pointed to the plans and explained the location of the retaining wall. The proposal is to have the

retaining wall start at the entrance of the cemetery area. The grade will be lower so that any runoff from off site will find a flow path towards the wetland area. The retaining wall will have to be built up in order to install the septic system to offset the ground water as well as making sure the burial plots are above ground water. Mr. Williams pointed to the plans and explained the flow of the water and the retaining wall. The retaining wall encompasses the cemetery area. Mr. Williams explained how the re-grading would affect the retaining wall. The plans show a stone line trench with perforated pipe for underground storage. The pavement is pervious pavement so that any runoff will percolate through the pavement and go into a gravel and stone bed that is underneath the pavement and will act as a reservoir.

Mrs. O'Rourke asked how many retaining walls are you constructing.

Mr. Williams replied it is one continuous wall. Mr. Williams pointed to the plans and explained the location of the retaining wall.

Mrs. O'Rourke asked are you going to be able to see the retaining wall. Will anything be planted in front of the retaining wall?

Mr. Williams replied the area is relatively wooded, however maybe in the fall when there are no leaves on the trees you will see the wall.

Mr. Reader asked are they going to add dirt or remove dirt and use a different material.

Mr. Williams replied within the leaching area the top soil has to be removed. The top soil will be used to loam and seed at a later date.

Mr. Reader asked what if they go to dig a grave and there is a boulder in that area.

Mr. Williams replied that the boulder would be removed. The area is basically sand and soil.

Mrs. O'Rourke asked are they going to bring in any loam or sand.

Mr. Williams replied yes, they are going to bring in loam so that grass can be planted. Mr. Williams showed the septic system plan to the Board Members. Mr. Williams explained that these plans do not reflect the revised grading. Another suggestion from Mr. Paradis is that the entry road be graded from the outside to the inside so that it would further capture some of the runoff. That needs to be added to the plans. All Phil's comments have been addressed and some additional notes have been added. The septic tank and d-box shall be designed and constructed to withstand an H-20 truck load. The framing covers to the septic tank will be bolted down. Those are the small issues. The big issue that I am still working on is the revised grading that Mr. Paradis suggested to try to cut down on the length of the retaining wall as well as making it easier for the offsite runoff to continue through the site and not be a problem for anybody. We just received the employer identification number that is needed. The Mosque will continue to own this property in perpetuity so that they will take care of the operation and maintenance of this property.

Mrs. O'Rourke asked is there going to be a building on the property.

Mr. Williams replied yes, there will be a chapel.

Mrs. O'Rourke asked if someone wanted to be buried in this cemetery who should they contact. Will there be someone in the chapel all the time?

Mr. Williams replied that they would contact someone at the Mosque. The chapel is not going to be used that often. They may have a religious service at the chapel occasionally.

Mrs. Giroux asked will it be possible to cover the retaining wall with some type of plantings or shrubs for the neighbors.

Mr. Nelson replied that he did not think his client would have a problem with that. That issue did not come up at the neighborhood meetings. The only concern that a neighbor expressed is not to stretch the development out beyond the concrete pad. So we addressed that concern by moving it further back. Mr. Nelson pointed to the plans and explained the plans for the retaining wall. No one voiced any concern with the visual looks of the retaining wall.

Mrs. Giroux commented that if she was a neighbor that abutted the property she would be concerned with the appearance of the retaining wall. Mrs. Giroux stated that she is requesting some type of screening for the retaining wall. My other concern is in the future would there be a possibility of expanding the cemetery.

Mr. Nelson replied no. The conservation restriction is going to restrict everything around this site. We can only use 1.43 acres of this site for the cemetery. The rest of the area is pursuant to the Wild Life permit.

Mr. Williams explained that we had a conversation with the Division of Fisheries and Wild Life and they would only allow the usage of the area that he pointed to on the plans. The rest of that area comes under protection for the blue spotted salamanders.

Mrs. Giroux stated is there a possibility of using the lawn and snow storage areas for expansion in the future.

Mr. Williams explained no.

Mr. Grady asked do they know how long it will take to fill the burial plots.

Mr. Nelson replied that currently there are 200 members in the community and there are 300 grave sites. When they looked at a different location it had 140 sites and that was expected to last at least 45 years. This site can accommodate 300 grave sites so that should take at least 90 years.

Mrs. Giroux asked what if they move on to another area. Who will maintain the cemetery?

Mr. Grady asked if the Mosque fails what will happen.

Mr. Nelson replied it is owned by a non-profit entity that currently owns the Mosque. That entity would continue to own the cemetery.

Mrs. Giroux stated from a neighbor's point of view she is concerned about the maintenance of the cemetery.

Mr. Nelson replied that he does not know what the plan is. I know that they spent 15 million dollars to build the Mosque and I don't think they are going to abandon the site. The Mosque is doing very well, they have a school on the site and they plan on expanding the facility at the Mosque.

Mr. Kane explained that the most recent review of the plan the Board has received from BETA Group states that there are still some outstanding issues however Mr. Williams explained that those issues have been addressed. We have not seen the plans that demonstrate those changes so I would like to hear from our consultant, Phil Paradis and the Director, Richard Berube that there is some guarantee that all the concerns have now been addressed.

Mr. Williams replied that the Board has not received the updated plans because there are issues that still need to be addressed. Most of them have been addressed except for the grading. All the other issues have been addressed and are on my set of plans. Once Mr. Paradis and I have discussed and resolved all the issues I will then print up a final set of plans. After Mr. Paradis completes his final review I will submit the finalized plans to the Board.

Mr. Berube informed Mr. Kane that the Board could make that a condition of approval similar to what has been done before for subdivisions.

Mr. Kane stated that he is concerned that once the approval is given the outstanding issues would not be resolved. I do not like to see outstanding issues that have not been finalized before the Board approves the project. I am sure that there are abutters that would like to express their concerns. I share the concern with an abutter having a three to five foot retaining wall in their back yard. I would like to hear from the abutters. The expansion within the 1.43 acres is my other concern. Is this number of grave sites final?

Mr. Nelson replied that the 1.43 acres is all the applicant can use. This is not like a municipal cemetery that can grow and expand.

Mr. Kane stated that he understands that however, I can see that there may be room to squeeze in 20 or 30 more plots off the roadway. Is this a capped number that has been presented on the plan?

Mr. Nelson replied that if one hundred (100) years from now they want to put in twenty-five (25) more grave sites within that site, it would not impact this Board's consideration or affect the stormwater management issue that we are here to address tonight. We are present tonight for approval of the Town's stormwater management requirements. At this time the applicant should not be restricted if they want to put in twenty-five (25) more graves sites in the future.

Mr. Kane asked what the approved number of grave sites is.

Mr. Nelson asked Mr. Williams is there room for more grave sites.

Mr. Williams replied physically there is room in the snow storage area. You could probably put plowed snow on top of a grave site however the relatives would be upset. It is grass and it is not an impervious surface. There would be no effect on any kind of runoff or drainage.

Mr. Nelson replied it is not a major issue at this time.

Mr. Kane stated that I don't think the people would be happy if the snow from the roadway was pushed onto their grave sites. Then the snow would be pushed into the wetlands and the retaining wall. The Board of Health would need to look at stormwater management.

Mr. Williams stated on Sheet 2 of the plans it indicates where signs will be placed around the disturbed areas. Sign A will be placed on the property and it is a warning sign, no trespassing wetland sensitive area basically Keep Out. Sign B will be put on the cemetery site and states limited maintenance zone so that anybody doing plowing or mowing of lawn cannot go beyond that wall.

Mrs. Giroux asked how high will the signs be.

Mr. Williams replied about five (5) feet above the ground.

Mr. Grady asked what will be installed around the retaining wall to keep people out of the cemetery.

Mr. Williams replied a wooden post and rail fence.

Mr. Grady asked where the gate openings will be located.

Mr. Williams explained that there would be only one (1) opening in the fence. There is a discussion still ongoing about putting in a gate to prevent anyone from coming into the cemetery area at night.

Mr. Grady asked will there be any lighting in the cemetery.

Mr. Williams replied no.



Mr. Grady stated that he is concerned that the wide open area will attract children because it is in an isolated area. Mr. Grady stated that when the area is plowed it would be easy to push snow through a post and rail fence and cause damage to the fence. If it is a black steel fence you can't push snow through the fence and damage is less likely to occur.

Mr. Williams replied the only area that needs to be snow plowed is the road itself and the chapel.

Mr. Grady explained that he snow plows in the winter and when you run into an area that the snow can not be pushed back you have to remove the snow. I am concerned that with a cedar post and rail fence it would be easy to plow the snow right through the fence causing damage to the fence. I am concerned about the secluded area and that there will be no security in the area. Are you going to remove the foundation that is not going to be used?

Mr. Nelson replied the foundation will be removed.

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

Phil Paradis, Professional Engineer, BETA Group, identified himself. Mr. Paradis explained that he was asked to review the project that relates to the septic system design, flood plain impact and stormwater management. As Mr. Williams indicated the majority of the comments from the initial submission have been addressed. A meeting was held on Monday, July 11, 2011 regarding the outstanding issues. Mr. Williams has agreed to change the profile to reduce the retaining wall within the one hundred (100) foot buffer zone to disperse the runoff and address a few other comments. We are still waiting on the stormwater pollution prevention plan. The plan is to bring in 6,500 cubic feet of fill. Once the walls are built that shouldn't be an issue. The site is mostly wooded.

Mrs. O'Rourke asked if any abutters would like to express their concerns.

Helen McCarthy, 62 Rangeway Road, Billerica identified herself. Mrs. McCarthy asked Mr. Williams if he could show the location of the retaining wall.

Mr. Williams pointed and explained where the retaining wall would be located.

Mrs. McCarthy asked when the developer was going to construct a house on that property we were going to have a water problem in our back yard. They were going to grade the yard. The road was going to be seven (7) feet higher than the corner of our property line. Will the water pool in that area?

Mr. Williams explained that the natural grade post development will be along the retaining wall at the low point and go out. Mr. Williams pointed to the plan and explained about the existing grade of the road and the low point in that area.

Mrs. McCarthy explained that this is the first time that we have seen an official plot plan. It appears that the cemetery boundary is closer to the abutters than we expected. Can you tell us how far it is between the abutter's property line and the retaining wall?

Mr. Williams replied approximately thirty (30) feet.

Mrs. McCarthy asked when we met with the owners; they mentioned that there was going to be a storage area and a maintenance building on the site. You did not mention the maintenance building you only mentioned that there was going to be a chapel. Is there going to be two buildings on the site?

Mr. Williams replied the chapel is going to be the only building on the site.

Mrs. McCarthy stated that the plot size has increased. We were told that there would only be about 200 grave sites, now you are telling us that there will be approximately 300 grave sites.

Mr. Williams explained that when we worked out the orientation of this site we figured that we could have 300 grave sites on the backside of the property. Mr. Williams pointed to the site and explained the only area that could be used.

Kim Vanauken, 66 Rangeway Road identified herself. Ms. Vanauken explained she is the abutter to the right. At the meeting with the neighbors there was no retaining wall so there was no discussion about a retaining wall or its appearance or any landscaping. I do have an interest in the appearance of the retaining wall. I prefer that the area not be well lit. I would prefer a wooden post and rail fence. I am not fond of a black steel fence. I do not want anyone that is on the property to get hurt. There was an issue brought up about the long term maintenance of the property. I want to thank the Board for requesting that a trust fund be set up to take care of the maintenance of this cemetery. Cemeteries do get abandoned. I want to wish them the best in the long term future.

Jack McCarthy, 62 Rangeway Road identified himself. Mr. McCarthy explained that on previous development attempts we were told that to make the road cut into the property they would have to encroach on our property line because of the water. Are you able to make the cut strictly on the cemetery property?

Mr. Williams replied that when he designs a project there is no way he is going to use any of the property that belongs to the residents. Mr. Williams pointed to the plans and explained how he designed the plans. We are close to the corner of your property but we are not on your property.

Mr. McCarthy stated that the previous developer said they needed part of our corner.

Mr. Williams explained that must have been when the proposal was for a residential subdivision on the site.

Mr. McCarthy replied yes.

Mr. Williams explained that this is just a twenty (20) foot driveway.

Mr. McCarthy asked Mr. Williams if he could explain about the grading going in on the roadway. Will it be a downgrade or an upgrade?

Mr. Williams replied it goes both ways. Mr. Williams pointed to the plans and explained how the grading would go out to the retaining wall where the post and rail fence would be located. There will be a stone line trench to capture the runoff and direct it right into the ground. Nothing will go over the retaining wall.

Mr. McCarthy explained that he would prefer a post and rail fence because it is nicer and we are concerned and would not like to see the wild life disturbed.

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

Mr. Berube stated that all the issues that were raised in the review letter have been addressed and meet the intent of our regulations. When Attorney Lentine was present last year at the Board of Health meeting an entity was going to be set up in perpetuity for the maintenance of the cemetery so that it would not be abandoned and it would be maintained.

Mr. Nelson explained that the statute states that any five (5) people in Massachusetts can organize a non-profit association if they want to set up their own private cemetery. A municipality or charitable organization or an existing religious organization can maintain cemeteries. A separate entity does not have to be set up for a religious organization or charitable organization.

Mrs. O'Rourke stated that at the meeting last year there was a woman from the Mosque that stated she was going to set up a maintenance fund.

Mr. Nelson stated that he would talk to his client about setting up a trust fund for the maintenance of the cemetery. I didn't bring it up because we are here primarily for stormwater management. I don't think that setting up a trust fund for the maintenance is going to be an issue. I understand the neighbors concern however it is a very viable organization and well-funded. They do not lack for funding to maintain the Mosque or the cemetery.

Mrs. O'Rourke requested that Mr. Nelson talk to Mr. Dahod about setting up a trust fund for the maintenance of the cemetery.

Mr. Nelson replied the woman was probably Mr. Dahod's sister. Mr. Nelson agreed to talk to Mr. Dahod about the trust fund for the maintenance of the cemetery.

Mrs. O'Rourke asked if anyone had any questions.

Mr. Kane asked how the stormwater going from these properties into the surrounding areas will affect the water flow. Is it going to create a change in the water flow off their property? Will it increase the potential for water on their property prior to construction?

Mr. Williams replied that the abutting properties are higher than the cemetery will be. The abutter's water will flow on to the cemetery property. The water flow post development will still flow to the back of the abutter's property and on to the cemetery site and hit the retaining wall. The grading is such that it will flow along the base of the retaining wall. The water will flow along the base of the retaining wall and hit a low spot. The abutters won't see any water on their property. The water will be on the cemetery property but not the abutter's property.

Mr. Kane asked Phil Paradis if he agrees with that assessment because it was not on his engineering report.

Mr. Paradis explained that NRC soils map indicate that this is a loamy sandy highly draining soil. Now that the applicant has chosen to pull the retaining wall back it will go to the porous pavement and the majority will infiltrate, if it reaches there at all.

Mr. Kane asked will it increase the potential for more water in the abutter's yard after construction.

Mr. Paradis replied no. Mr. Paradis pointed to the plans and explained that the lowest elevation is 124. He pointed to elevations 132 and 124 at the corner. The water would have to raise up two (2) feet over the road.

Mr. Berube explained that water won't be trapped there. It will be conveyed to the rear of the property and most of it will be infiltrated so there will not be an issue.

Mr. Nelson asked Mrs. Giroux what kind of shrubs would the neighbors like along the retaining wall.

Mrs. Giroux asked the neighbors what kind of shrubs they would like to see.

The neighbors replied evergreens.

Mrs. McCarthy stated that she just wants it kept as natural as possible.

Mr. Berube asked about the kind of fence.

Mr. Grady stated that he is concerned with the security of the property.

Ms. Vanauken stated the only concern is the driveway area and if anyone goes back there we will report it. Ms. Vanauken stated that she is concerned for the environment. When the cemetery is not in

use it will only be a clearing in the woods.

Mrs. McCarthy stated that she hopes there is not going to be any signage on the street directing people to the cemetery.

Mr. Nelson replied that he is not aware of any plans to put signs on the main road.

Mrs. Giroux made a motion to grant the request for approval of the Rangeway Road Cemetery Project in North Billerica based on the revised finalized plans, a review of the security plan at the front entrance, the approved screening used for the retaining wall, the Stormwater Pollution Plan and the confirmation of a plan for the long term maintenance and operation funding based on the following findings of fact and pursuant to the following conditions:

**FINDINGS OF FACT**

- 1) The work described in the applicant's request is within an area subject to protection under the Billerica Health's Rules and Regulations Chapter 5, Section 5.5.005 (2) and Chapter 6 inclusive.
- 2) The Board of Health conducted a public hearing on July 11, 2011 and properly notified abutters in accordance with Billerica Health Regulations, Chapter 1, Section 1.2.007.
- 3) The applicant proposes to construct a 309 burial plot cemetery and appurtenant structures on a 62,152 +/- square foot Permitted Use Area as granted by the Massachusetts Division of Fisheries and Wildlife Natural Heritage Program within a 16.7 acre site. A portion of the access road to the cemetery falls within one hundred (100) feet of the flood plain. The proposed chapel will be serviced by town water and an on-site sewage disposal system.
- 4) The project was reviewed by Philip F. Paradis, Jr. of BETA Group, Inc., the Board of Health's Consulting Engineer for potential impacts to the Flood Plain as well as compliance with applicable drainage regulations and the provisions of 310CMR15.000, the State Environmental Code, Title 5 and the Board of Health Rules and Regulations, Chapters 5 and 6.
- 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 the Board of Health Rules and Regulations. Further, approval of the applicant's request will not be detrimental to the public health and environment.

**CONDITIONS**

Standard conditions number 1, 2, 3, 4, 5, 6, 8, 9, 10, 11, 12, 13, 14, 15, 17, 18, 19, 20, 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 Dresser, Williams & Way, Inc., dated December 17, 2010 and revised to June 16, 2011 and stamped by Joel Williams, RPE#29522.
- B) The applicant must provide final approved plans for any project covered by the conditions. Final plans are considered plans approved by all town departments and addresses all comments raised by the Board of Health at the hearing conducted July 11, 2011.
- C) The applicant shall submit a plan that secures the access road/entrance to the cemetery from unlawful entry for review and approval by the Board of Health prior to the approval of any permits.
- D) The applicant shall submit a plan that provides screening for the retaining wall which shall consist of native evergreen shrubs for review and approval by the Board of Health before the approval of any permits.
- E) The applicant shall provide documentation of the financial assurance mechanism that will provide for the long term operation and maintenance of the cemetery to the Board of Health prior to the approval of any occupancy permit.

Mr. Reader seconded. So voted unanimously.

**Open Microphone**

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

No one was present for open microphone.

Mr. Kane stated that he would like to discuss the deliberation process prior to the Board voting. As a Board we work well together and the information we receive from the applicant is very thorough. However, I think we need to work together as a team to get new ideas and prompt new questions. When a motion is made there is no discussion among the voting members regarding the motion. My concern is that once the motion is made can we have an opportunity to discuss the motion or amend the motion prior to the final vote. Maybe we would like to change a portion of the motion or amend the motion. We don't talk enough amongst ourselves regarding the issues. For example an issue came up at the last meeting that I was concerned about the notification of abutter's. The motions were combined and it was

an all or nothing vote. I would have liked to split the motion into two separate motions one for the notification of abutters and one for the approval of the variance.

Mr. Reader stated that once a motion is made a Board Member can ask that a discussion be held before the motion is seconded.

Mrs. O'Rourke stated that she always asks if the Board Members have any questions. Once a motion is made a Board Member can request that he or she would like to discuss the motion.

Mr. Kane stated that he would like the opportunity to say can we amend the motion.

Mr. Reader stated that once the motion is made you can discuss the motion before it is seconded.

Mr. Kane stated that it is very rare that the Board has not voted unanimously. However there have been a couple of cases that I would have liked to discuss the motion before we voted.

Mrs. O'Rourke reiterated that if a Board Member has a concern or a question a discussion can be held before a motion is seconded. Mrs. O'Rourke asked Mr. Kane if he could explain his second question.

Mr. Kane stated that about a year ago an issue came before the Board and part of the issue was how the professional staff handles cases on a day to day basis. Often by the time a case gets to the Board a lot of things have happened and we have to trace back and see how things got started. We do have a very confident and qualified professional staff. By the time the Board hears about a case it is usually a variance or something has become very complex. For my understanding I want to know what the standard operating procedures are and how the case is processed, what the time line is and what the flow is. So that when something comes before the Board we know how the department staff is handling the case and if they are following the standard operating procedures like the Board follows the Billerica Rules and Regulations. When a case is presented the Board can say that the professional staff followed the standard operating procedures. The Board can then explain to the applicant that we understand your concerns but our policies have been followed by our professional staff and we are sorry that you are not happy with how the case has been presented. Then the Board can stand behind the Health Department staff that deals with these problems every day. If something has not been followed by the standard operating procedures then that falls on the Board as well as the professional staff. My request is to see a copy of the standard operating procedures that states the policies and standards from the administrative side for the professional staff.

Mr. Berube explained that the procedures the Health Department staff follows are in the rules and regulations and all the various CMR codes that we enforce. The codes explain all the procedures and the process that we have to follow. We are very consistent in our approach. Anything can become a legal matter so we have to follow due process. As for our records we are running out of room because we cannot dispose of the records. We have many files. Our property files contain the past history of any

address. If we see a pattern we monitor that case more closely. If there is no past history we are more lenient depending how cooperative the person is. The details of a case dictate how we proceed. People that are cooperative we work with them. The people that are resistant are most likely to end up in court so we are stricter with them and go by the letter of the law.

Mr. Kane stated so beyond our regulations and the CMR codes the Health Department does not have any written operating procedures outside of our regulations as how the process is followed.

Mr. Berube explained that there are many ways a person can file a complaint whether it is by word of mouth, a phone call, through email, in person or in writing. After a complaint is filed with the Health Department the case is logged into a complaint book and then assigned to a health agent for further investigation.

Mr. Kane stated so there isn't any separate standard operating procedure administrative guidebook.

Mr. Berube explained that many of our codes are very specific and that is how we conduct the investigations. All the procedures are spelled out in the various CMR codes and we reference those codes.

Mr. Kane thanked Mr. Berube for his explanations.

Mrs. O'Rourke asked Mr. Kane if he had any other questions.

Mr. Kane replied no.

Mrs. O'Rourke asked Mr. Berube if anyone has called to inquire about taking the Disposal Works Installers (DWI) test to replace a septic system in Billerica.

Mr. Berube replied no, the person was supposed to call for an appointment and he never called.

Mrs. O'Rourke explained to the Board that a person needs to have their septic system replaced and the installer that was going to do the work was not licensed in Billerica so Mr. Berube was going to give him the test because as you know the DWI test is only given in March and November.

Mr. Berube explained that in Phavy's activity report the court requested that the Health Department make an exception and allow the installer to take the test so that the septic system could be replaced at 8 Alrose Drive. However the person has not called to schedule a time to take the test.

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



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

The Board adjourned at 8:45 p.m.

Respectfully submitted,

Sandra Giroux  
Secretary

Joanne M. White  
Recording Clerk