

**BOARD OF HEALTH MINUTES**  
**August 8, 2011**

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

**ACCEPTANCE OF MINUTES**

Mrs. Giroux made a motion to accept the Meeting Minutes of July 11, 2011.  
Mr. Kane seconded. So voted unanimously.

**BOARD OF HEALTH BUSINESS**

**Health Department Activity Reports**

Mr. Reader 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 July are included in the Boards package.

Mr. Berube stated that he would first summarize Health Agent, Gary Courtemanche's report. Gary has completed fifty-nine (59) total inspections, 6 complaints, 42 routine, 5 re-inspections and 6 site visits for septic systems and conservation inspections and 1 Farmers Market (11 vendors). Gary is conducting weekly inspections and collecting water samples at Micozzi Beach. The beach has been closed twice during the month of July due to the bacterial count. The beach is currently open. Three (3) summer recreational camps were inspected during the month of July. There are currently five (5) summer camps permitted with the Town. A large amount of trash and bulk items were left by the curbside at 28 Peace Street, the owner was notified and the problem was resolved. A complaint was received about trash in the brook and mosquitos in the area that runs from Boston Road to Sprague

Street. Phavy and Gary met with the complainant and walked the area. Phavy contacted Central Mass Mosquito Control and requested that the area be sprayed. Arrangements will be made to clean out the trash and debris in the brook this fall. A complaint was received that the noise coming from a generator at Tev Tec was back. Gary met with the owner of Tev Tec to discuss the possibility of installing noise deadening material. An order was issued for Tev Tec to seek an alternate energy source from the utility company to eliminate the noise problem completely. At this time the issue has not been resolved. A resident complained about being sick after eating chicken at Rick's Café. No medical recourse was sought. An inspection was conducted and there were no violations related to the resident's illness. However, there were some other issues that needed to be addressed. An order was issued and the violations were corrected. The noise issue with the HVAC units on the roof at Market Basket, 480 Boston Road is still being addressed. An email was received regarding a bird in Market Basket at 700 Boston Road. Gary spoke with the manager. The bird left the store on his own accord. Mr. Berube explained that he received a complaint regarding a large amount of pallets and other construction debris located at Billerica Avenue which is owned by Crescio Company. Gary investigated the complaint, contacted the owners and issued an Order for Correction.

Mr. Berube asked if the Board Members had any questions regarding Gary's report. The Board Members did not have any questions.

Mr. Berube stated that the next activity report is from Health Agent, Phavy Pheng. Phavy had a total of thirty-five (35) active cases. Eleven (11) cases are new complaints. Eight (8) cases have been closed. Phavy assisted Gary in the collection of the water samples at Micozzi Beach. The septic system at 8 Alrose Drive should be finished on Tuesday, August 9, 2011. The septic system at 26 Patten Road has been repaired and that case has been closed. There is a probate court hearing scheduled in August for 78 Pinedale Avenue. The court hearing for the failing septic system has been continued to September 19, 2011. As for the septic system at 141 Pond Street the owners have moved and the sale of the house is pending. Once the sale is finalized the buyer will be required to fix the system.

Mr. Reader asked if the owner of 483 Middlesex Turnpike is living on the premises.

Mr. Berube replied that an order was issued denying the owner the right to live there. We are trying to contact his attorney because the attorney has denied the Board of Health access to the property. We are trying to schedule an inspection to see what progress has been made and take appropriate action. If there has not been any significant progress we may have to file this case in court. It has been well over a year since the original order was issued. The Board of Health may have to condemn the property.

Mr. Kane asked is there a timeline for taking further action.

Mr. Berube replied that we would like to gain access to the property to see what the conditions are. If not we will have to file this case in court and take legal action.

Mr. Reader asked when is 32 Sheridan Street going to start construction.

Mr. Berube explained that erosion control has been installed in preparation for the demolition of the house.

Mr. Berube explained that the green bagsters have become a problem in town. Residents are putting a lot of large bulk items in the bagsters that could be picked up free by Allied Waste trash removal if the residents paid attention to the trash collection guide that the Department of Public Works provides.

Mr. Reader stated that there should be a limited amount of time on how long a bagster can be kept on a residential property.

Mr. Berube replied that he is going to contact the Department of Environmental Protection about the bagster and see if there is anything they can recommend. Then we will need to contact the company that picks up the bagsters.

Mr. Berube asked the Board Members if they had any questions regarding Phavy'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. Christine provided the Billerica Minuteman with information for an article on preventing Lyme disease. Christine, Carole Butze, Director of School Nurses, John Clark, Town Treasurer and Kelly Odams, Assistant Treasurer met with Pamela Santin a representative from Blue Cross Blue Shield on August 1, 2011 to discuss the Billerica Wellness Program for Town Employees. They discussed the medical claim costs that the Town had between April 2010 and March 2011. A discussion was held on what programs would be beneficial to the Town and the employees to help reduce the health premium costs. A health seminar, a walking program and/or screenings were suggested that would benefit the employees as well as the Town. In September, the plan for the upcoming calendar year 2011-2012 for the town wellness program will be submitted to the Town Manager, John Curran for approval. Back to School physicals will be scheduled with the Town's MD.

Mr. Berube asked the Board Members if they had any questions regarding Christine's report. The Board Members did not have any questions.

### **Mosquito Control Program**

Mr. Reader stated the next item is the Mosquito Control Program.

Mr. Berube explained that included in the Board's package is a copy of the latest Surveillance Summary dated August 8, 2011. There has been an increase in the number of West Nile Virus (WNV) Positive Pools. Central Mass Mosquito Control will be in Billerica on the following dates in August, August 1, 4, 10, 16, 22, 25 and 31 to investigate the resident's complaints. A copy of an article about the WNV found in Acton is included in the Board's package. Residents are urged to use mosquito repellents

as a precaution. At this time Billerica is at a low risk for mosquito borne illnesses. Mr. Berube asked if the Board Members had any questions.

Mrs. Giroux asked if the Lampson field has been sprayed this year.

Mr. Berube replied that arrangements for the spraying of the school areas and recreational fields are usually made through the school department. The neighbors in that area need to be notified before the spraying occurs. It is usually a three (3) to five (5) day process.

Mrs. Giroux asked is that field going to be sprayed.

Mr. Berube replied that he assists Peggy Hannon-Rizza, Director of Recreation in making the arrangements for the spraying of the recreational fields.

### **Beaver Control Report**

Mr. Reader stated the next item is the Beaver Control Report.

Mr. Berube stated that as you can see from the Beaver Solutions Report we have been quite busy. We worked with Pan Am Railways to trap all the beavers in the Pond Street area. Pan Am Railways gave authorization to install three (3) new Flexible Pond Leveler pipe systems in the Middlesex Canal area. This work has been completed.

Mr. Reader asked how many beavers have been trapped.

Mr. Berube replied that at least six (6) beavers between the Pond Street area and the Billerica Country Club have been trapped. Mr. Berube explained that we met with a few of the neighbors on Marshbrook Road and there are some beavers in that area. That area is next to the conservation land. We are currently working on that problem. Mr. Berube asked if the Board Members had any questions.

The Board Members did not have any questions.

### **Iron Horse Park Superfund Site**

Mr. Reader stated the next item is Iron Horse Park Superfund Site.

Mr. Berube stated that included in the Board's package is a copy of the presentation that the Environmental Protection Agency (EPA) is giving at the Selectman's Meeting on August 8, 2011 regarding the Sediment & Groundwater Cleanup Plan Decision. The Sediment Cleanup options are Sediment Alternative SD-4 and Sediment Alternative SD-6. The EPA decided to go with the SD-4 plan which is the least invasive. Most of the residents were in favor of going with the SD-6 plan. The SD-6 plan would remove a great deal more sediment. The EPA decided to go with SD-4 plan despite all the comments from the residents.

Mr. Reader asked did the lumber company take over the area where the poles were stored.

Mr. Berube replied no, the area where the poles were stored is vacant. Mr. Berube explained that the EPA decided that spending the extra money on the SD-6 plan would not provide additional environmental protection.

Mr. Reader asked when this work will be completed.

Mr. Berube replied the SD-4 plan will take twenty (20) years. The SD-6 plan would take five (5) years.

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

Mrs. Giroux asked will the Board receive updates throughout the process. When will the process start?

Mr. Berube replied that the Health Department will receive updates throughout the process. As soon as the process starts I will provide that information to the Board.

**Tobacco Control Program – Ron Beauregard – Healthy Communities**

Mr. Reader stated the last item under Board of Health Business is Ron Beauregard, Tobacco Control Program.

Ron Beauregard, identified himself. Mr. Beauregard explained that he has worked with Tobacco Control since January 2001. Mr. Beauregard explained that he is very interested in working with students that decide to smoke at the age of fifteen. Billerica is now a part of the program. When I started working with Tobacco Control in 2001 there was only six (6) communities involved, then it went to twelve (12) and currently there are nineteen (19) communities. Mr. Beauregard named some of the communities that are involved. The primary purpose of the program is to follow the contract with the State. We need input from all the Boards of Health. I am present tonight requesting from the Board to be your agent to enforce your Board of Health Regulations for Tobacco Control. The most important regulation is the illegal sale of tobacco to minors. It is our plan to conduct at least one compliance check with all of the tobacco permitted establishments in Billerica. Mr. Beauregard explained the process that would be used. I would be going with a student that is 15, 16 or 17 to an establishment. The student would go into the establishment and attempt to purchase a tobacco product without an ID. The State Law clearly states that anyone that looks under 27 must show an ID. Before the compliance checks are done I have met with the owners or managers of the establishment and explained that this is an educational tool. Ten (10) years ago when the compliance checks were done 20% of the stores sold tobacco to minors especially where no program was in place. After a sale is made to a minor it is documented into a PDA and a citation is issued. Mr. Beauregard stated that one of the establishments in Haverhill thought that the compliance checks were sneaky. After I explained to the owner that this is the best way to check on the sale of tobacco products to minors, he understood. The average sale rate is now

5% and in some instances it is lower. With input from Mr. Berube and the Board Members we can do special projects. I will be available to do the compliance checks, respond to complaints about smoking in the workplace, training and pilot projects such as encouraging landlords in condominium associations to be voluntarily smoke free. Some retailers have chosen to sell crack pipes. Mr. Beauregard explained that he is trying to discourage retailers from selling crack pipes. Mr. Beauregard explained what a crack pipe looks like. Mr. Beauregard gave the Board Members samples of flavored blunt wraps that are also sold in tobacco establishments. Blunt wraps have been banned in Boston. The package says to roll your own cigars. Mr. Beauregard listed all the flavors that blunt wraps come in. Banning blunt wraps in Boston is under investigation. Mr. Beauregard suggested that Billerica may want to restrict the sale of blunt wraps. Some of the communities are considering banning tobacco in pharmacies which Boston and Worcester have done. I am present to help with any questions or problems that you may have with tobacco issues or concerns. I am requesting from the Board the authority to enforce the Billerica Board of Health Tobacco Regulations and issue a citation when there is a sale to a minor. I like to work with the retailers and provide educational training. Mr. Beauregard talked about the Billerica Board of Health Tobacco Regulations and the stages of the fines that are documented in the regulations. Mr. Beauregard explained about the electronic cigarettes, snooze, pills and candy.

Mrs. Giroux asked Mr. Beauregard if he knew about spice.

Mr. Beauregard replied that he is not familiar with it.

Mrs. Giroux stated that it is supposed to be synthetic marijuana.

Mr. Beauregard replied synthetic marijuana is also called K2. I have not found it in any of the establishments.

Mrs. Giroux explained that one of her co-workers told her about it. It can be purchased in Andover. Do you need students for your investigations?

Mr. Beauregard replied yes, generally we need students 16 & 17 years of age. I like to do the paperwork myself. I have been doing it for ten (10) years. I can always use new students to perform the compliance checks.

Mr. Reader asked when you do a compliance check and the establishment passes, do you go in and acknowledge that the establishment has passed.

Mr. Beauregard replied sometimes. Some of the Boards prefer that I do that. Some of the programs think it is wrong to go in right after the compliance check has been done.

The Board discussed when is the right time to go in and tell them about the findings.

Mr. Beauregard explained that I inform the retailers that they should always ask for an ID. Some of the programs wait until the next day or after the students have gone home to inform them that they

have passed or failed. The down side to that is they think the manager of that establishment will call another establishment and warn them that compliance checks are being done.

Mr. Berube explained that in the past, a couple of the Billerica agents had altercations with the business managers. That is the only down side.

Mr. Beauregard explained that his approach is when an establishment has failed the compliance check I usually explain to the manager that it is a mistake or an error.

Mrs. Giroux stated that she thinks you should go in after they have passed or failed the compliance check. If they have passed you should congratulate them and let the manager know that their clerk is on track. It is a positive reinforcement. If the establishment has failed you should let them know what they need to do so that it does not happen again. I recommend that you go in after the check has been completed and let the retailer know the results of the compliance check.

Mr. Beauregard explained that going in after every compliance check takes time; another alternative is to write a follow-up letter.

Mr. Reader asked the Board Member if they had any questions.

Mr. Grady asked does it have to be posted in the local paper when the compliance checks are being done with the under age students.

Mr. Berube replied it does not have to be posted.

Mr. Kane asked is it legal for the vendors to sell the retailers, bombs, crack pipes, hookahs etc. When you do educational training do you address and explain the uses of those products?

Mr. Beauregard replied it is a very delicate issue because some of those tobacco products are used for Middle East purposes.

Mr. Kane asked who has supremacy in a regulation. The State came out with a new regulation regarding access to self-service tobacco in a non-adult facility. Many years ago this Board granted a waiver prior to that regulation being enacted. We requested that the Attorney General give us an opinion whether a local Board of Health could waive the State regulation or could a retailer be grandfathered with a waiver from the State's regulations. We never received an answer from the Attorney General. As our tobacco control coordinator would you be able to utilize your office and your resources to get a formalized opinion from the AG's office.

Mr. Beauregard explained that there are two resources. One is from the Mass Municipal Associates, Attorney DJ Wilson and the other is from the Attorney for the Mass Municipal Associates for Health Boards, Cheryl Sbarr. The State Regulations set the floor not the ceiling. The State law is the floor. It is my understanding that the local regulations cannot go below that floor.

Mr. Kane asked can the local Board of Health waive the State law.

Mr. Beauregard replied the laws that I enforce are the local regulations. If the Billerica Board of Health Regulations still has that variance they can keep it at the bare minimum.

Mr. Reader asked Mr. Berube for his comments.

Mr. Berube replied that as Ron stated he will be available to do whatever the Board requests and also do the compliance checks. Mr. Berube explained that the Board needs to make a motion to appoint Ron Beauregard to act as an agent for the Billerica Board of Health to enforce the Tobacco Regulations.

Mr. Kane commented that would give him the legal authority to enforce our regulations and issue a citation when necessary.

Mrs. Giroux made a motion to appoint Ron Beauregard as an agent of the Billerica Board of Health in order to enforce the Billerica Tobacco Control Regulations.

Mr. Kane seconded.

Mr. Reader asked the Board Members if they wanted to discuss the motion. The Board Members were satisfied with the motion.

So voted unanimously.

Mr. Reader thanked Ron Beauregard for his presentation.

Mrs. Giroux asked how can we get in touch with you if we know of any students that would like to volunteer to help with the program.

Mr. Beauregard replied that his number is 978- 490-8114.

**7:15 p.m. Daniel H. Scharn – 115A Bridle Road – Request a Variance for work within 25 feet of the Flood Plain**

Mr. Reader stated the next item is Daniel Scharn, 115A Bridle Road, requesting a Variance for work within 25 feet of the Flood Plain.

Daniel Scharn provided the Board with a large copy of the proposed plans for the new dwelling to be located at 115 Bridle Road.

Daniel Scharn, 115A Bridle Road, Billerica identified himself. Mr. Scharn explained that he wants to raze the existing dwelling and construct a new single family dwelling.



Mr. Berube explained that on the maps in the Boards package the green line represents the Green Engineering Flood boundary and the yellow line represents the FEMA flood boundary.

Mr. Scharn explained that the foundation for the new house will be raised up. I am going to shorten the house by 28%.

John Noble, 50 Main Street, Woburn, General Contractor for the project, identified himself. Mr. Noble explained to the Board Members the location of the existing house and the location of the proposed house. Mr. Noble explained that there will be a 28% decrease in the impervious area.

Mrs. Giroux asked about the proposed garage.

Mr. Noble pointed to the location of the proposed garage.

Mr. Reader asked Mr. Scharn if he has appeared before the Conservation Commission.

Mr. Scharn replied yes, about a year and a half ago.

Mr. Reader asked how big is the proposed house going to be,

Mr. Noble replied approximately 2,150 square feet.

Mr. Grady asked is the proposed house going to be connected to town sewer.

Mr. Noble replied that the old house is on septic and the proposed house will be connected to town sewer.

Mrs. Giroux asked if the existing house flooded last year.

Mr. Scharn replied when I was a kid I can remember that there was a couple of sump pumps in the basement. The house has not flooded in years. The new house will have a foundation raised two (2) feet above the water table.

Mr. Reader asked Mr. Berube for his comments.

Mr. Berube explained that the applicant is going to raze the existing house and construct a new house on a smaller footprint. All the work is going to be outside the flood plain. The proposed house will be on town sewer. Soil testing needs to be done for the basement floor elevation which will be two (2) feet above the water table.

Mr. Reader asked if the Board Members had any questions.

Mr. Kane asked has the deep hole test for the water table been completed.

Mr. Scharn replied not yet.

Mr. Reader asked if any abutters were present. No abutters were present.

Mrs. Giroux made a motion to grant a variance of Board of Health Rules and Regulations, Chapter 5, Section 5.5.005 (1) (2) in order to construct a single family dwelling within twenty-five (25) feet of Flood Plain at 115 Bridle Road based on the following findings of fact and pursuant to the following conditions:

### **FINDINGS OF FACT**

- 1) The work described in the applicant's request is within an area subject to protection under the Billerica Health's Rules and Regulations, Chapter 5, Section 5.5.005 (1) (2).
- 2) The applicant proposes to raze an existing dwelling and construct a new single family dwelling. The new dwelling will be serviced by town water and sewer.
- 3) The location of the proposed dwelling will be further away from the Green Engineering Flood Plain and the FEMA Flood Plain than the existing dwelling. There will be no filling within 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, 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 Jay Jarosz dated October 19, 2009 and revised to January 14, 2010 and stamped by Jay Jarosz, PLS#47394.
- B) These conditions must be properly recorded at the Registry of Deeds and a certified copy of these conditions must be returned to the Board of Health office indicating that a marginal reference was made on the original deed, prior to the Health Department approval of any building permit, occupancy permit, certificate of compliance, etc.
- C) A deephole test must be performed at the proposed location of the proposed dwelling to determine the groundwater elevation. The minimum vertical separation distance from the basement floor above the high ground water elevation shall be two (2) feet pursuant to

Billerica Health Regulations. Documentation must be submitted to the Board of Health prior to the approval of any permits.

Mr. Grady seconded.

Mr. Reader asked if anyone would like to discuss the motion. The Board Members were satisfied with the motion.

So voted unanimously.

**7:20 p.m. Robert A. McLennan – 13 McLennan Way – Request a Waiver of Regulations for work within the Flood Plain**

Mr. Reader stated the last item on the agenda is Robert McLennan, 13 McLennan Way, requesting a Waiver of Regulations for work within the Flood Plain.

Robert McLennan, 13 McLennan Way, North Billerica identified himself. Mr. McLennan explained that he is proposing to connect to town sewer. Presently my septic system is very old. I can't connect to town sewer on Alpine Street because the road was just paved and there are no plans to install sewer on Alpine Street in the near future. I am proposing to connect to town sewer on Donna Road.

Mr. Berube explained that Mr. McLennan's property is surrounded by wetlands and flood plain and crosses the old Middlesex Canal. The reason that Mr. McLennan has come before the Board is because the work will take place in the flood plain. Most of his property is in the flood plain. The Board granted Mr. McLennan a variance when he built the house in 1988. Now he is having an issue with his septic system and he wants to connect to town sewer on Donna Road. Cutting through the flood plain and any disturbance will be temporary because the property will be returned to its existing grades.

Mrs. Giroux asked has this project been approved by the Conservation Commission.

Mr. McLennan replied that he will be meeting with the Conservation Commission on August 17, 2011.

Mr. Berube explained that the Board has granted a waiver for this type of connection on High Street in the past. There won't be any long term impacts from this.

Mr. Reader asked the Board Members if they had any questions. The Board Members did not have any questions. Mr. Reader asked if any abutters were present. No abutters were present.

Mr. Reader asked Mr. Berube if he had any other comments.

Mr. Berube replied that Mr. McLennan's septic system is old and the best course of action is to connect to town sewer. Mr. McLennan is being pro-active.

Mrs. Giroux made a motion to grant a Waiver of Billerica Health Regulations, Chapter 5, Section 5.5.005 (1) (2) to allow the connection of a sewer service located within the flood plain at 13 McLennan Way based on the following findings of fact and subject to the following conditions:

**FINDINGS OF FACT**

- 1) The work described in the applicant's request is within an area subject to protection under the Board of Health's Rules and Regulations, Chapter 5, Section 5.5.005(1) (2).
- 2) The applicant proposes to upgrade the sewage disposal system serving the existing dwelling located 13 McLennan Way through the installation of a sewer extension.
- 3) The work associated with the sewer extension is located within the Green Engineering Flood Plain. The applicant will connect to the sewer main in Donna Road through the installation of a force main. There will be no change in the existing grades.
- 4) The Board of Health has determined that the actions proposed by the applicant are adequate measures to protect the public health and environment and complies with the intent of Board of Health Rules and Regulations. Further, approval of the applicant's request will not be detrimental to the public health and environment.

**CONDITIONS**

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

- A) All construction must be in accordance with plans submitted for review and approval, prepared by Noonan & McDowell, Inc. dated May 9, 2011 and stamped by John L. Noonan, RPE#36821, PLS #33000. .
- B) The existing septic system shall be abandoned following connection to municipal sewer in compliance with 310CMR15.354 the Massachusetts State Environmental Code, Title 5.
- C) The applicant shall provide a copy of the approved sewer connection permit to the Board of Health.

Mr. Grady seconded.

Mr. Reader asked if anyone would like to discuss the motion. The Board Members were satisfied with the motion.

So voted unanimously.

Mr. Berube suggested that he could send a memo to support this project to the Conservation Commission. It is going to be beneficial to the environment and any disturbance will be temporary.

The Board agreed with Mr. Berube's suggestion.

**Open Microphone**

Mr. Reader asked if there is anyone present for open microphone tonight.

No one was present for open microphone.

Mr. Kane asked what is the status of the proposed restaurant Via Dell Amore on Boston Road in Pinehurst

Mr. Berube explained that he just received plans from the applicants engineer on Monday, August 8, 2011. After I review the plans, I might send it out for a peer engineering review. They may be scheduled to come before the Board at the September 12, 2011 Board of Health meeting.

Mrs. Giroux asked what is going on with Peppercorn's Family Restaurant.

Mr. Berube replied they are waiting for their liquor license to be transferred.

Mrs. Giroux asked what is going on with Garrison's. Why are they closed for the month of August?

Mr. Berube explained that originally Garrison's was going to do some major renovations like move the kitchen, etc. However, when they found out the cost they decided to just do some minor interior renovations like move the dishwasher, change the rug, replace some of their booths and replace the ceiling.

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

The Board adjourned at 8:05 p.m.

Respectfully submitted,

Sandra Giroux  
Secretary

Joanne M. White  
Recording Clerk