

BOARD OF HEALTH MINUTES
November 7, 2011

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

ACCEPTANCE OF MINUTES

Mr. Kane made a motion to accept the Meeting Minutes of October 3, 2011. Mr. Reader seconded. Three voted in favor, one vote abstained (Mike Grady).

CORRESPONDENCE

Mrs. O'Rourke asked Mr. Berube if he would like to talk about the correspondence memo.

Mr. Berube explained that included in the Board's package is a Letter of Appreciation and Gratitude from William Megow who lives on Marshbrook Road. Mr. Megow explained that he has experienced severe flooding conditions over the years in the spring due to water overflowing. Mr. Megow contacted the Board of Health and explained his problem and thought there might be beaver activity in that area. The Board of Health and Beaver Solutions investigated the problem and found that there was beaver activity that resulted in the blocking of the flow of water through the culvert. The Board of Health along with the Department of Public Works and Beaver Solutions worked together to resolve the problem and provide the residents in that area with relief. Since the problem has been addressed there haven't been any flooding problems in that area. Mr. Berube stated that it is nice to receive a thank you once in awhile from the residents in town.

BOARD OF HEALTH BUSINESS

Health Department Activity Reports

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

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

Mr. Berube stated that he would first talk about Christine West, the Public Health Nurse's report. Christine has been busy with scheduling and organizing flu clinics. As you can see the actual flu inoculations have decreased since last year because residents have the option to get the flu shots from their doctor or local pharmacies much earlier in the season.

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

Mr. Berube stated the next report is from Health Agent, Gary Courtemanche. Gary and Phavy are present to answer any questions that the Board may have regarding their reports.

Mr. Kane asked Gary if he has heard from the Mobile Truck that was operating without a valid permit at Empire Recycling.

Mr. Courtemanche explained that the operator called and stated that he was going to bring in the paperwork. However, I have not heard from him. I found out that he was operating in Tewksbury without a license also. I contacted the Police Department and found out that the owner was driving on a suspended license.

Mr. Berube provided the Board Members with pictures showing the progress at 32 Sheridan Street.

Mrs. O'Rourke asked Phavy if the surveillance camera has been set up on Saville Street for illegal dumping.

Ms. Pheng explained that according to the Department of Environmental Protection (DEP) the camera will not be available until December.

Mrs. O'Rourke asked where on Saville Street is the illegal dumping taking place.

Ms. Pheng explained on the side of the dirt road.

Mr. Berube explained that there is a section of Saville Street where there is no development and it is being used as a dumping ground. The manager of Lakeside Mobile Home Park keeps us informed of what is going on in that area.

Ms. Pheng explained that she has cited a two (2) people for illegal dumping on Saville Street. One of people that she cited for illegal dumping has paid the fine.

Mr. Grady asked Ms. Pheng if she has heard back from Bank of America regarding 334 Salem Road.

Ms. Pheng replied no. Ms. Pheng explained that she was advised by the court magistrate to do more research on the address with Bank of America because the court needs more information before filing the case.

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

October 29, 2011 Storm Impact

Mrs. O'Rourke stated the next item is the October 29, 2011 Storm Impact.

Mr. Berube explained that approximately 83% of the residents in Billerica lost their power. Our main concern was the food service establishments that lost power. Gary visited all the food establishments to see how they were doing and what they were doing to recover from their loss. Gary has provided the Board with a report. Gary is present to explain his findings and answer any questions the Board may have.

Mr. Courtemanche explained that he spent Monday through Thursday visiting seventy-one (71) establishments that lost power. Gary explained that he made sure that all the perishable food that did not hold temperature was properly disposed of. The three (3) supermarkets in town did a great job in responding to the power loss. Market Basket staged refrigerated trucks with generators at the stores ahead of the event and canceled any incoming deliveries of perishable foods. The two (2) Market Baskets that lost power only sold dry good, not perishable foods. The Market Basket located at 700 Boston Road was the only store that did not lose power at all. The schools have generators and backup systems for the main walk-ins however they had to dispose of all the food in the stand-up refrigerators.

Mrs. O'Rourke asked how they disposed of the food.

Mr. Courtemanche explained that they had extra dumpster pickups for the food.

Mrs. Giroux explained that in the report Wendy's, the Hess Gas Station and the Boston Road Mobil were marked off that they did not lose power.

Mr. Courtemanche explained that Wendy's only lost power for a short time and opened on Monday. The employee at the Hess Station told me that they did not lose power. Boston Road Mobil did not have any perishables. They only had milk that they threw out.

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

Village at Fox Hollow II – 27 Ferren Drive Site Walk

Mrs. O'Rourke stated the next item is Village at Fox Hollow II – 27 Ferren Drive Site Walk.

Mr. Berube explained that at the Board of Health meeting on October 3, 2011 Linda Flynn, 27 Ferren Drive had some concerns regarding the impact of stormwater runoff from the proposed Village at Fox Hollow II project. Mr. Berube explained that he was directed by the Board to conduct a site walk with the Project Engineer, Stephen Dresser to observe the conditions during a storm event and the day after the storm. I submitted a report to the Planning Board with my observations at the site. The golf course does not impact Ms. Flynn's property at all. On the memo to the Planning Board are some of the issues that we found regarding her property. Ms. Flynn has no grass on her property because of all the trees. I suggested that she have some of the trees removed and hire a landscaper to regrade the property. The water flows towards her foundation. Her roof drains discharge at the base of her foundation. The gutters need to be cleaned. There are a lot of things Ms. Flynn can do herself to improve her property.

Mrs. O'Rourke asked Mr. Berube if he saw the sink hole.

Mr. Berube replied yes. I told her it was probably a stump burial. That is not an uncommon practice that occurred in the past. It will only get worse over time. She might want to fill in the sink hole so that it does not cause the water to collect and run toward her house.

Mrs. O'Rourke asked was Ms. Flynn happy with your conclusion.

Mr. Berube explained that he did not think that Ms. Flynn was entirely convinced. She was thankful that we came out and met with her. We showed her everything that we talked about.

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

Adoption of Proposed 2012 Board of Health Meeting Schedule

Mrs. O'Rourke stated the next item is the adoption of the Board of Health Meeting Schedule for 2012. Mrs. O'Rourke stated that the dates on the schedule should reflect 2012 instead of 2011.

Mrs. Giroux asked if the meeting time could be changed to 7:30 p.m.

A discussion was held and the majority of the Board Members wanted to keep the meeting time at 7:00 p.m.

Mrs. Giroux made a motion to change the meeting to 7:30 p.m.

Mr. Kane seconded. The rest of the Board Members did not vote in favor of changing the meeting time to 7:30 p.m. So the meeting time remains at 7:00 p.m.

Mrs. O'Rourke asked if the Board Members had any conflicts with the meeting dates.

A discussion was held regarding the January 9, 2012 meeting. That meeting may be rescheduled to another day in January due to Mrs. O'Rourke's surgery and Mr. Reader will not be available.

Mr. Reader made a motion to accept the 2012 Board of Health Meeting Calendar with the exception of the January 9, 2012 meeting that may need to be rescheduled.

Mrs. Giroux seconded. So voted unanimously.

Substance Abuse Prevention Committee

Mrs. O'Rourke stated the next item is the Substance Abuse Prevention Committee.

Mr. Berube explained that Helen Devlin is present to introduce Tracy Shaw, the new Board of Health representative on the Substance Abuse Prevention Committee.

Mrs. Devlin explained that about a year ago the Board of Health appointed me to the Substance Abuse Prevention Committee as a voting member. Before that I was an auxiliary member. At this time there is another opening and I would like the Board to consider appointing Tracy Shaw as a member of the committee. Currently Tracy is an auxiliary member. Tracy Shaw is present tonight to explain why she would like to be appointed by the Board to the Substance Abuse Prevention Committee.

Tracy Shaw, 14 Moran Road, Billerica identified herself. Ms. Shaw explained that she started attending the meetings as a concerned citizen about two and half years ago. I am a resident in Billerica and have raised two sons in Billerica. One son graduated in 2005 and the other son graduated in 2007. My older son became addicted to pain killers after he graduated and in his first year of college he died of an overdose in September 2008. Shortly after that I contacted John Mullin and explained that I wanted to be involved in a group that was trying to educate our community and help to prevent similar instances from happening. I currently participate and help the committee with various activities. This is a good opportunity for me to be a valuable member of this committee after all that I have gone through.

Mrs. O'Rourke stated that she compliments Ms. Shaw for wanting to be part of the Substance Abuse Committee considering all that she has gone through.

Mrs. O'Rourke asked if there are any other applicants that may be interested in becoming involved with the Substance Abuse Prevention Committee.

Mrs. Devlin replied no. Mrs. Devlin stated that many of the original members of the board have become involved in other activities so we are seeking new members.

Mrs. Giroux made a motion to appoint Tracy Shaw as a member of the Substance Abuse Prevention Committee.

Mr. Reader seconded. So voted unanimously.

Mrs. O'Rourke welcomed and thanked Ms. Shaw for wanting to participate in the Substance Abuse Prevention Committee.

Establish Sub-Committee to Draft Regulations for the Keeping of Hens

Mrs. O'Rourke stated the last item under Board of Health Business is to establish a Sub-Committee to draft regulations for the Keeping of Hens.

Mr. Berube explained that Martha Coakley, Attorney General has approved the Keeping of Hens By-Law that was adopted at the 2011 Spring Town Meeting. Mr. Berube stated that he is looking to form a sub-committee to draft regulations for the keeping of hens. Mr. Berube stated that he has tried to contact the proponent, Jennifer Croce to see if she would be interested in participating on the committee.

Mr. Reader and Mr. Grady volunteered to be on the committee.

Mr. Berube stated that he would put together a package of information and a proposed meeting schedule.

7:15 p.m. Wayne and Theresa Ferguson – 18 Kazimer Drive – Request Waiver of Regulations for work within the Flood Plain

Mrs. O'Rourke stated the next item on the agenda is Wayne and Theresa Ferguson, 18 Kazimer Drive, requesting a Waiver of Regulations for work within the Flood Plain.

Mr. Ferguson provided the Board with a copy of the Certified Plot Plan for 18 Kazimer Drive showing the location of the proposed project.

Wayne Ferguson, 18 Kazimer Drive, Billerica identified himself. Mr. Ferguson explained that his mother is 87 years old and lives alone in Wilmington. I am looking to construct an in-law apartment for her because she can no longer live alone. I began this process a year ago and found that I needed special requirements from the Town. I hired an architect and went through the special permitting process which was approved in April. I had the land surveyed and gave the job to a contractor. When he applied for the building permit he found out there was a problem with the Green Engineering Flood Plain. I am requesting information and help so that I can complete this project.

Mr. Berube explained that in the Board's package is a copy of the Plot Plan that delineates where the Green Engineering Flood Zone is located. It is an isolated flood plain. I met with Mr. and Mrs. Ferguson on their property and based on my observations this flood plain has been altered over the years. It appears that the flood plain is no longer in existence. The only thing that remains is a swale that cuts across the backyard. There is a drain where the water flows to the drain easement. There are no flooding issues. My recommendation is to grant the waiver. Mr. Ferguson has indicated that he will do

do some regrading of his backyard so that the water will still flow to the drain easement.

Mrs. O'Rourke asked why the proposed apartment is so far away from the existing house.

Mr. Ferguson explained that the garage is not built yet. The garage, mudroom and the in-law apartment will be attached to the existing house. Mr. Ferguson explained that there will be three doors that will lead to the each of the areas.

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

Mr. Kane asked will there be a full foundation or a slab.

Mr. Ferguson replied the proposed project has been designed with a full foundation.

Mr. Kane asked about the elevations of the flood plain.

Mr. Berube explained that the lines on the map show the flood plain. The flood plain has been altered so there is only a slight swale that cuts across the back yard.

Mrs. O'Rourke asked do you get water in your basement.

Mr. Ferguson explained that he gets water in his basement on rare occasions. Everyone in that area has a water problem because the water table is high. Some of the houses on the street have permanent sump pumps in their basements. The original house was built as a tri-level and the level underneath is just a crawl space.

Mr. Kane asked Mr. Ferguson if he knows what the water table is.

Mr. Ferguson replied that he does not know.

Mr. Kane stated that he is concerned that the addition meets all the Board of Health requirements.

Mr. Berube explained that the requirements are only with a new house, not with additions.

Mr. Kane stated that the garage and mudroom addition appear to be the same size as the original house.

Mr. Berube explained that the drainage mitigates a lot of the impact of the flood plain.

Mrs. Giroux asked what type of foundation will be constructed under the in-law addition.

Mr. Ferguson replied a full foundation. The original plan was designed for a full foundation.

Mrs. Giroux asked will you use the foundation as living space.

Mr. Ferguson replied that the foundation will only be used as a storage area.

Mrs. Giroux asked do you plan on putting in a sump pump.

Mr. Ferguson replied that he planned on putting in at least one sump pump.

Mrs. Giroux asked is the addition going to be connected to town sewer and water.

Mr. Ferguson replied yes. The existing house is already on town sewer and water.

Mr. Kane asked will the utilities be located in the basement.

Mr. Ferguson replied that is the plan. The heating system will be gas. I was told by the Building Department that they will determine where the heating unit would be located.

Mr. Kane asked will the furnace for this addition be in the basement.

Mr. Ferguson replied that is where he planned on putting the unit, however the Building Department will make that determination.

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

Mr. Berube explained that he has been on the site after a storm and the water drains out of the area. There are no flooding problems.

Mrs. Giroux made a motion to grant a Waiver of Billerica Health Regulations, Chapter 5, Section 5.5.005 (1) (2) to allow the construction of an in-law addition located within the flood plain at 18 Kazimer Drive based upon the following findings of fact and subject to the following conditions:

FINDINGS OF FACT

- 1) The work described in the applicant's request is within an area subject to protection under the Board of Health's Rules and Regulations, Chapter 5, Section 5.5.005(1) (2).
- 2) The applicant proposes to construct an in-law addition to the existing dwelling located at 18 Kazimer Drive. The proposed addition encroaches upon an isolated flood plain as delineated on the Green Engineering Flood Plain (GEFP) Map #37. The property does not fall within the FEMA Flood Plain. The property is served by Town water and sewer.
- 3) The Director of Public Health has visited the site and found that the GEFP has been altered and no longer exists as shown on the GEFP Map #37. Furthermore, the property drains to a

drainage easement located on the abutting property at 16 Kazimer Drive.

- 4) The applicant proposes to regrade the rear of the property to compensate for any perceived impacts to the GEFP.
- 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
- B) The applicant shall regrade the rear of the property to maintain the integrity of the existing stormwater drainage system. In particular, the rear yard shall be regraded so that the stormwater runoff drains to the drainage easement abutting the property at 16 Kazimer Drive.

Mr. Grady seconded. So voted unanimously.

7:20 p.m. Cumberland Farms, Inc. – 301 Boston Road – Request Variance for work within the Flood Plain and Stormwater Management Approval

Mrs. O'Rourke stated the next item on the agenda is Cumberland Farms, Inc., 301 Boston Road, requesting a Variance for work within the Flood Plain and Stormwater Management Approval.

Attorney Philip Lombardo provided the Board Members with a large copy of the proposed plans for Cumberland Farms, 301 Boston Road for review and discussion.

Attorney Philip Lombardo identified himself. Attorney Lombardo introduced Luke DiStefano the Project Engineer and Don Johnson from Cumberland Farms. We are seeking a Variance for work within the Flood Plain and Stormwater Management Approval. Philip Paradis, BETA Group has been hired to conduct a peer review. Attorney Lombardo explained that he would give a brief overview of the plans for Cumberland Farms. The project consists of a convenient store and a gas station to be located at 301 Boston Road. The plan is to demolish the existing stores and construct a new gas station and convenient store. Attorney Lombardo pointed to the plans and explained the location of the drainage design and the landscaping. Mr. DiStefano is present to explain the drainage design.

Luke DiStefano, Polar Engineering, Southborough, MA identified himself. Mr. DiStefano explained that the petition is because the site is located partially within the Green Engineering Flood

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Plain (GEFP). It was determined that the GEFP elevation is 122 and the town reserves the right to modify the elevation by 3 feet so that puts the existing site GEFP elevation at 119. It has been determined that under post development conditions we would be distributing approximately 19 cubic yards or be placing an additional 19 cubic yards of fill within the 119 elevation. We would offset that through the introduction of the underground stormwater management system with a series of underground pipes. Those pipes have the capacity of just less than 73 cubic yards of volume. So there will be a significant amount of additional volume that will be provided to offset any impact to the GEFP. It is important to know that the GEFP was determined a long time ago and this area has since been redeveloped. The FEMA Maps show the 100 year flood elevation at 116. We are proposing significant improvements to the stormwater quality and quantity exiting at the site. There is a small portion of runoff onto Boston Road and a small portion of runoff onto the abutting properties to the east. We are proposing significant improvements that will contain all the runoff on site. The runoff will be collected by a series of deep sump hooded catch basins throughout the property and convey the stormwater to a stormceptor. Mr. DiStefano pointed to the plans and explained how the system would work and where the catch basins would be located and where they would discharge to. Under the proposed plan we are eliminating 100% of the runoff that makes its way to Boston Road and 60-90% of the runoff that makes its way on to the abutting properties. We are proposing significant reduction of runoff rate to the Phiney Street and Hadley Street stormwater drainage system. We meet all the requirements under the Mass DEP Stormwater Management Guidelines as indicated in the report provided by the BETA Group. We will also provide significant improvements to the stormwater quality. We will also meet and exceed the 80% DSS removal with the introduction of the stormwater quality unit and the deep sump catch basins. Mr. DiStefano stated that he would answer any questions that the Board or the audience may have.

Mr. Berube stated that Phil Paradis, BETA Group conducted a review of the project on behalf of the Board and will present his findings to the Board.

Phil Paradis, Professional Engineer, BETA Group, identified himself. Mr. Paradis explained that he was asked by Richard Berube, Director of Public Health to review the Cumberland Farms project. The existing site has been operating with the fuel island uncovered. There are currently no stormwater management treatment systems on site. The proposed project will reduce the paved area, cover the fuel island with a canopy and provide a required stormwater management system. The volume of storage will reduce the runoff. The proposed 19 cubic yards of fill will not have an impact considering the amount of storage that will be gained. The project meets all the stormwater management standards, the flood plain compensation will be met with the subsurface system and the soil contamination issues. The proponent has addressed all my concerns.

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

Mr. Grady asked what the timeline for this project is.

Attorney Lombardo replied that this project will begin as soon as all the permits are obtained. The project should start within the next few weeks.

Mrs. Giroux asked how many new gas tanks will be installed.

Mr. DiStefano replied that two (2) new 20,000 gallon tanks will be installed.

Attorney Lombardo stated that the Selectmen have issued a license for the new tanks.

Mrs. Giroux asked about the traffic flow in and out of that area.

Attorney Lombardo explained that the driveways will be narrower. We reduced the opening on the Phiney Street side and also on the Boston Road side. We submitted traffic reports to the Zoning Board of Appeals when we received our special permits and variances. There will be no significant traffic issues.

Mrs. Giroux asked are there going to be any road repairs to Phiney Street on your behalf.

Attorney Lombardo replied we will redo the areas around our property that are affected.

Mrs. Giroux asked if there was going to be any improvements on the side closest to Garrisons' Restaurant.

Mr. DiStefano replied there will be a significant buffer compared to what is currently there.

Mrs. Giroux asked how many pumps will there be.

Mr. DiStefano explained that there will be 6 self-serve pumps so there will be 12 fueling positions and 1 full service pump with 2 full service positions. The 2 full service pumps are required by the Town. There will be a total of 7 pumps each will have 2 fueling positions available.

Mr. Berube explained that a traffic study was done. The Town's Engineering Department reviewed the study and comments were forwarded to Cumberland Farms. Cumberland Farms addressed all those comments.

Mr. Reader asked how large are the existing tanks.

Mr. DiStefano explained that there would be 3 fueling tanks 8,000 gallons each. They will be the state of the art fueling tanks with double wall fiberglass monitors. They will be a lot better than what is currently there.

Mr. Reader asked is this station going to be similar to the one on Route 38 in Wilmington.

Mr. DiStefano replied yes.

Mrs. O'Rourke asked when the old tanks are dug up is the dirt going to be covered.

Mr. DiStefano explained that is standard operating procedures. The soil will be tested and depending on what they find it will either be used again or taken away. There will be a Licensed Site Professional (LSP) on the site when the tanks are dug up.

Mr. Berube explained that at one of the meetings it was discussed that when the project was being constructed there would be a LSP on site.

Mrs. O'Rourke asked if there would be vapor recovery.

Mr. DiStefano replied for a little while.

Mrs. O'Rourke asked if there will be a canopy.

Mr. DiStefano replied yes.

Mrs. O'Rourke asked if any abutters or anyone in the audience that would like to ask a question concerning Cumberland Farms, 301 Boston Road.

No abutters were present.

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

Mr. Berube explained that the project will be a vast improvement over what is there now. There will be less of an environmental impact. The impact to the flood plain is negligible. It will be a huge improvement. I do not have a problem with granting a variance and stormwater management approval.

Mrs. Giroux asked if the area would be well lit at night but not shining into residents home.

Mr. DiStefano explained that the area would be well lit to provide the customers with a safe area. Mr. DiStefano explained the type of lighting that would be used.

Mrs. O'Rourke asked what will the hours of operation be.

Mr. DiStefano replied that the station will be open 24 hours.

Mr. Reader made a motion to grant a variance of Board of Health Rules and Regulations, Chapter 5, Sections 5.5.005 (1) and (2) in order to construct a convenience store/fueling station in and within one hundred (100) feet of Flood Plain. The applicant also seeks stormwater management approval pursuant to Board of Health Rules and Regulations, Chapter 6 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, Sections 5.5.005 (1) (2) and Chapter 6 inclusive.
- 2) The Board of Health conducted a public hearing on November 7, 2011 and properly notified abutters in accordance with Billerica Health Regulations, Chapter 1, Section 1.2.007.
- 3) The applicant proposes to completely redevelop an existing commercial lot containing a strip mall, associated parking, a single uncovered gas pump island and underground storage tanks (UST's). The scope of the project includes the demolition of all site features, removal of the UST's and the construction of a 3,634 square foot convenience store, a four (4) island fueling area under a canopy, new UST's a stormwater management system as well as new parking and landscaped areas.
- 4) The project was reviewed by Phil 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, Chapter 5 and the Massachusetts Contingency Plan.
- 5) The Board of Health will impose reasonable conditions to ensure the project is constructed in accordance with approved plans.
- 6) The Board of Health has determined that the actions proposed by the applicant are adequate measures to protect the public health and environment and complies with the intent of Board of Health Rules and Regulations. Further, approval of the applicant's request will not be detrimental to the public health and environment.

CONDITIONS

Standard conditions number 1, 2, 3, 4, 5, 6, 8, 9, 10, 11, 12, 13, 14, 15, 17, 18, 19, 21, 22, 23, 24, 25, 26, 27, 28 and 29 in accordance with the Board of Health regulations and Special Conditions:

- A) All construction must be in accordance with plans submitted for review and approval, prepared by Bohler Engineering dated February 9, 2011 and revised to October 20, 2011 and stamped by Stephen P. DeCoursey RPE#36424.
- B) The applicant must provide food service establishment plans for the proposed convenience store to the Board of Health for review and approval.

- C) A Licensed Site Professional (LSP) shall be required to be on-site during the excavation and removal of the existing underground storage tanks (UST's). The LSP shall utilize a Photoionization Detector (PID) to screen soil samples during this activity. A report of the LSP's findings shall be submitted to the Board of Health.

Mrs. Giroux seconded. So voted unanimously.

7:30 p.m. Swanson Meadows Board of Trustees – Empire Recycling Noise Violations

Mrs. O'Rourke stated the last item on the agenda is Swanson Meadows, Board of Trustees, regarding Empire Recycling Noise Violations. Mrs. O'Rourke requested that when a speaker got up they should state their name and address clearly and each group should have a designated speaker.

Martial Frechette, Board of Trustees provided the Board Members with documents describing the current concerns of the residents at Swanson Meadows and a memo from the Town Manager, John Curran.

Martial Frechette, 216 Rangeway Road, identified himself. Mr. Frechette explained the concerns of the residents and the current issues facing the residents at Swanson Meadows and their dealings with the management of Empire Recycling located at 36 Sterling Road. Also included in the packet is a memorandum from the Town Manager, John Curran requesting that the operating hours of Empire Recycling be restricted to comply with the Town of Billerica Noise By-Law. Mr. Frechette explained the chronological list of events that the residents have been facing. The Board of Trustees at Swanson Meadows needs the help of the Board of Health. We are asking the Board of Health to designate a town official and create a link on the Board of Health website so that people at Swanson Meadows can document their violations as they occur.

Mrs. O'Rourke asked the Board Members if they had any questions. The Board Members agreed to hold all their questions until all the speakers were finished.

Attorney James Dangora, Shea, Dangora and Nelson, Billerica identified himself. Attorney Dangora explained that he is representing Empire Recycling. A number of years ago the Board of Health was involved with the approval of the Swanson Meadows Condominiums project. In 2001 the Board of Health drafted a decision that a 150 foot buffer zone was to be constructed between the condominiums and the industrial property. I do not think that was ever done.

Mr. Berube replied no, the buffer was not constructed.

Mrs. O'Rourke commented that Rocco Scippa was supposed to take care of it.

Attorney Dangora stated if that had been done we probably would not be here tonight. Empire Recycling is trying to build a three (3) sided structure. The Board of Appeal and the Conservation Commission approved the structure. We are presently before the Planning Board. Attorney Dangora pointed to the plans and explained that the 3 sided structure would be enclosed and it would be sound

proof. The Conservation Commission has authorized paving around the back side of the building. The purpose of the paving is to keep the noise level and the dust down. We keep running into road blocks. Richard Berube, Director of Public Health recommended that the Planning Board approve the project. If we receive approval the structure will eliminate some of the noise. We need the Board's help with this matter.

Mrs. O'Rourke stated that she did not know why the sound barrier was not built. I thought Rocco Scippa was going to take care of that. Instead some mulch and flowers were planted in that area which did not help the noise. If this was part of the agreement I don't understand why someone from the town or the Board of Health has not made sure that this situation was addressed.

Mr. Berube explained that Rocco Scippa did put up a sound barrier. It runs along the property line. It is a stockade fence that has some sound absorbing material in the middle but it is not high enough to block out the noise.

Mrs. O'Rourke asked why isn't Rocco Scippa fixing the problem.

Mr. Berube replied that Rocco Scippa is no longer involved with the condos.

Mrs. Giroux asked does the Board of Health still have his bond.

Mr. Berube explained at that time the Board of Health did not require a bond. The Zoning Board of Appeal had a bond but I do not know what happened. There were some issues and I do not know if they were resolved.

Mrs. O'Rourke asked who is now responsible for fixing the barrier.

Mr. Berube replied the condo association. They own it now.

Mr. Reader asked who owns the land.

Mr. Frechette replied the condo association.

Mrs. Giroux stated so the condo association is responsible for maintaining the property.

Mr. Frechette replied yes.

Mrs. Giroux asked is this area part of the property.

Mr. Frechette replied that he does not know. Even if the 3 sided structure is built it is not going to stop all the noise. It will not stop the pounding noise. All we are asking is that Empire Recycling abides by the 10 p.m. to 7 a.m. hours. The residents have spent hundreds of thousands of dollars to buy a condo and they cannot get a good night's rest.

Mrs. Giroux asked didn't the residents sign a deed restriction acknowledging that Empire Recycling was located at 36 Sterling Road.

Mr. Pynn replied that we did not sign anything that stated they could break the law.

Mrs. Giroux explained that the Deed Restriction states *"the Industrial trucking activity adjacent to the Swanson Meadows property, located on Sterling Road, may generate noise, odors and traffic."* *"Further as owner of this property, I/We agree to provide this notification to potential buyers, if I/We choose to sell the property in the future."*

Mrs. O'Rourke asked when Empire Recycling first started operating didn't they have specific hours of operation.

Attorney Dangora replied no.

Mr. Berube replied they have never had specific hours of operation and it has never been addressed by any of the Town Boards.

Ken Pynn, Chairman of the Board of Trustees identified himself. Mr. Pynn stated that the Deed Restriction that we signed did not say that they could operate outside of the Department of Environmental Protection (DEP) regulations or the Town of Billerica Noise By-Law.

Mrs. Giroux stated that there was a deed restriction that all homeowners should have signed.

Mr. Pynn replied I believe they did.

Mrs. Giroux stated so you knew that Empire Recycling was a 24 hour operation.

Mr. Pynn replied no. Mr. Pynn explained that a study was done by Howe Associates for the Town. In that report it refers to Empire Recycling as a very low activity operation. The study says nothing about operating 24 hours a day. It stated that at night the activity was very restrictive. It did not say that they were allowed to operate outside the noise by-law.

Mr. Frechette explained that the letter from the Town Manager, John Curran explains the hours of operation.

Mrs. O'Rourke stated that she thought there was a memo from the Zoning Board of Appeal (ZBA) stating the restricted hours of operation.

Mr. Berube stated that he never saw that memo.

Mrs. Giroux stated that she always thought Empire Recycling was a 24 hour operation.

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Mr. Frechette stated that it can be a 24 hour operation as long as they operate below 50 decibels.

Mrs. O'Rourke explained that the letter from the Town Manager, John Curran states that looking at the history of this study it appears that the operation was previously restricted by the ZBA to 6:00 a.m. to 10: p.m. Monday through Saturday.

Attorney Dangora stated that is bogus.

Mrs. O'Rourke asked where did Mr. Curran get that information.

Attorney Dangora explained that he requested a meeting with Mr. Curran and he would not meet with us. It is bogus. The sound study indicated that the recycling business operates at 3:00 a.m. The Board of Health requested that study. The study was done in 2001 by Jeff Rider, Howe Associates the Town's consultant.

Mr. Berube replied the Board of Health did not request that study.

Mr. Grady asked what was there before Empire Recycling.

Someone in the audience replied another recycling company.

Mrs. Giroux replied it has been a recycling operation for quite some time.

Attorney Dangora gave Mr. Berube a copy of the Board of Appeal's decision that talks about the 24 hour operation.

Mr. Reader asked Attorney Dangora doesn't Empire Recycling have the responsibility to be a good neighbor.

Attorney Dangora replied they are being a good neighbor.

Mr. Reader stated that if he lived there he would not want to hear all that noise at 1 or 2 a.m. I would not be a happy man.

Attorney Dangora replied you would not live there because there are too many restrictions. You would have been advised up front. That was the purpose of the Board of Health's acknowledgement that all residents signed.

Mr. Grady asked is material being dumped at that hour of the night or is it just the noise from the beeping of the trucks.

Joseph Motzkin, Jr., Empire Recycling, identified himself. Mr. Motzkin explained that in the off hours materials are being brought in from Boston to avoid the traffic. I have been working with the

condo association for the past several months. We are limiting the amount of boxes that are been dumped during those hours. We are dropping the boxes off at the farthest corner away from the condos or off site. I have given my cell phone number to the condo association so that they can call me any time there is a problem. Whenever anyone calls I respond immediately to correct the problem.

Mr. Grady asked are there any other trucking companies that come in during the off hours.

Mr. Motzkin replied there are no trucks from any other companies coming in during the off hours.

Mrs. Giroux asked how many trucks come in during the off hours.

Mr. Motzkin replied approximately 3 to 5 trucks a night come in to drop off material or boxes

Mrs. Giroux asked what is the noise level.

Mr. Motzkin replied the containers make more noise than the other drop offs. We try to avoid them. One of the drivers dropped off boxes during off hours and that driver was suspended immediately. If it happens again he will be terminated.

Mrs. Giroux asked has there been any improvement since you made the modifications in your scheduling and educated your drivers.

Mr. Frechette replied we are still getting complaints.

Mrs. Giroux stated that was not her question.

Mr. Pynn stated that the residents would like to speak.

Cindy Morgida, 216 Rangeway Road, Unit 192, identified herself. Ms. Morgida explained that she made a complaint to Health Agent, Phavy Pheng this morning. At 2 a.m. this morning I woke up to the banging and clanging noise. It scared the life out of me. I have talked to Mr. Motzkin a number of times. The past two times when I talked to Mr. Motzkin he had not received a response from his drivers. Ms. Morgida stated they are trying to do a lot of band aid fixes.

Mr. Motzkin explained that he did not hear about any complaints last night. All the noise is not coming from us. New Penn makes noise as well. When we complete the structure one of the provisions that was requested by the condo association was that cameras be installed so that the condo owners can monitor the activity going on at night and see who is making the noise.

Mrs. Giroux asked what is the timeline for the structure.

Mr. Motzkin replied it is up to the Planning Board.

Mr. Grady asked are you talking about the noise that is coming from the open dumpster and the metal construction debris.

Mr. Motzkin replied that noise would definitely not break the noise barrier.

Mr. Kane asked how do you know that.

Mr. Motzkin replied that he does not know that for sure. I do not have a noise meter.

Mrs. Giroux asked has it been tested for the levels.

Mr. Motzkin replied no, testing has not been done to measure the level of noise for dumping.

Mr. Pynn explained that the condo association had a noise study done however, it was unofficial. We measured the noise and it was at 110 decibels.

Mrs. Giroux asked what were the conditions, the season, etc.

Mr. Pynn explained it was done in August or September and a microphone was mounted.

Mrs. Giroux asked how long ago was that.

Mr. Pynn replied two or three years ago. Mr. Pynn stated even after the noise pollution is resolved there is air pollution that needs to be addressed.

Mrs. O'Rourke asked does this affect the entire Swanson Meadows I and II complex.

Mr. Pynn explained that the air pollution affects both complexes and based on the complaints that we have received the noise pollution only affects about 4 or 5 buildings out of the 11 buildings at Swanson Meadows I.

Attorney Dangora explained if we are allowed to build the structure as proposed we will sound proof the ends. The Conservation Commission has approved paving up to the wetlands which was suggested by Phil Paradis, BETA Group, Inc. The paving will eliminate a lot of the noise and the dust behind the building.

Mr. Frechette stated because we are still receiving complaints on a weekly basis. If you stop the noise and the complaints we will back you up 100% to build the structure.

Attorney Dangora replied the structure is going to help.

Mr. Frechette replied the structure is not going to help enough. I question whether the sound proofing will even help.

Mrs. O'Rourke stated we have to give them a chance. It is up to the Planning Board to approve the structure.

Mrs. Giroux asked when is the Planning Board meeting.

Attorney Dangora replied Monday, November 14, 2011.

Mrs. Giroux stated if the Planning Board approves the structure and if the condo association puts in the buffer, with those two together the noise and the complaints will be reduced.

Mr. Berube stated there is no way a buffer zone can be created. The buildings have already been constructed and they can't be physically moved.

Attorney Dangora explained that in the ZBA's decision the developer of the condos was supposed to insulate the back of the building. Was that ever done? The hearings in 2001 before the Board of Health and the ZBA were to discuss those issues. The developer never met those conditions.

Mrs. O'Rourke commented that someone was asleep at the wheel.

Attorney Dangora agreed.

Mrs. O'Rourke stated that if they put up the barrier and the 3 sided structure, pending approval from the Planning Board, we have to give them the opportunity to try.

Mr. Frechette stated that the noise is not coming from inside the structure. Even if they build the structure they will dump the material outside the structure. The noise will still be there.

Mr. Motzkin explained that we have the basic framework of the structure built and everything is being dumped inside the structure.

Mr. Grady stated that he disagrees. Mr. Grady explained that he has driven by on the weekend and has seen the plastic material outside the structure and not inside. You are not 100% in compliance. I have seen the operation.

Mr. Motzkin explained that sometimes when the material is dumped it spreads out.

Mr. Grady asked is this structure going to be in an enclosed area from the back end.

Mr. Motzkin replied yes.

Mr. Grady stated you will still have front end loaders pushing, scraping and shoveling in the early morning hours. Can you hold off the hours of when you start having the material dumped? Do the trucks beep and make noise? We are trying to find a medium that everyone can live with.

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Lee Nogler, 9 Valera Street, Dracut, MA, operation manager, identified himself.

Mr. Grady asked in the enclosed staging area, how many deliveries come in before the bailers start working. When does the actual process start?

Mr. Nogler replied that what they are complaining about is the banging of the boxes. They are not complaining about the loaders pushing.

Ms. Morgida replied yes we do hear the banging noise. The noise we hear is banging and scraping like finger nails scraping on a chalk board and diesel engines.

Mr. Grady asked after the trucks leave do you hear any other noises.

Ms. Morgida replied there is an ear piercing whining noise. I don't know what it is or where it is coming from.

Mr. Grady asked do you operate late at night inside.

Mr. Nogler replied yes. The shift ends about 11:00 - 11:30 p.m. The first shift comes in at 3:00 a.m. We do not operate between 11:00 p.m. and 3:00 a.m.

Mr. Grady stated so the first shift comes in at 3:00 a.m. and starts firing up the bailers and get the cardboard and the plastic ready to be crushed.

Mr. Nogler explained that Mr. Motzkin requested that I go there at 2:30 a.m. sit in my car and listen for the noise. On numerous nights I have sat behind the building until 5:00 a.m. and you cannot hear anything.

Mr. Motzkin explained that another step we have taken is to close the side door where the materials are dumped. We put sound proofing material in the back wall. We did a sound study and it shows that we reduced the noise level.

Mr. Kane asked can we have a copy of the sound study.

Mr. Berube replied that he has a copy and it is not a sound study, it is a sound evaluation. They did not take any noise readings. It was an evaluation of the facility and recommended what could be done to reduce noise.

Joseph Motzkin Sr., identified himself. Mr. Motzkin explained that we did everything that was recommended in that evaluation to reduce the noise.

Mr. Nogler explained that he received a call from one of the condo residents stating that trucks were blowing their horns. The New Penn trucks were blowing their horns at 3:00 a.m. They did not

believe me because I work for Mr. Motzkin.

Mr. Grady asked about the location of New Penn.

Mr. Nogler explained the location of the New Penn loading docks and the procedure that is used when the trucks come into the area.

Mrs. O'Rourke asked what New Penn's hours of operation are.

Mr. Nogler explained that they operate 24 hours a day seven days a week.

Mr. Grady asked what companies are across the street from Empire Recycling.

Mr. Nogler explained the companies located in that area.

Mr. Frechette explained that there is noise coming from New Penn Trucking, however it is minimal compared to the noise coming from Empire Recycling.

Attorney Dangora explained that this is an industrial area.

Mr. Frechette stated it is a residential area.

Attorney Dangora explained that this is an industrial area. There is only a small piece of that area that is residential. Mr. Curran got his information from you and that information is wrong.

Mrs. O'Rourke asked would it be a hardship if Empire Recycling curtailed their hours of operation.

Attorney Dangora replied there are 38 employees. They do not want to lay anyone off. This company has been operating 24 hours a day seven days a week since they began.

Mr. Motzkin explained yes, it would be a hardship. All our employees are concerned with losing their jobs. When the drivers heard we were coming before the Board, they were concerned that they might lose their jobs.

Mrs. O'Rourke commented that she did not want to see anyone lose their job. There are too many people out of work now.

Mr. Motzkin asked the employees that were present to please stand up.

Mrs. O'Rourke thanked the Empire Recycling employees for attending the meeting.

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Nicole Rhuda, 18 Marie Avenue, Salem NH, Office Manager, identified herself. Ms. Rhuda explained that this is only a fraction of our employees. There are a lot of people that work in the warehouse that are not drivers.

Mr. Babu, 216 Rangeway Road, Unit #1101, identified himself. Mr. Babu expressed his concerns for himself and his neighbors. We don't sleep at night and unless you hear the noise you do not know what we are experiencing. It is the continuous banging and clanging noise that really bothers us. Something needs to be done.

Attorney Dangora explained that in the 2001 decision a 150 foot buffer zone was supposed to be created. If that work was done we would not be going through this. The condos were not built they way they were supposed to be.

Javier Salcedo, 216 Rangeway Road, Unit #134 identified himself. Mr. Salcedo stated that after listening to everything that is happening I am concerned about my two year old daughter. My daughter is very scared and is being affected by the noise at night. We don't want to offend anyone. We have a problem today and we cannot just say that everyone has to move. We just want to have a happy life. We have a problem and we need to resolve it.

Steve Dresser, Dresser, Williams & Way, identified himself. Mr. Dresser explained that he was the engineer for the Swanson Meadows project at the time. What happened was that New Penn Trucking came in and stated that they run a 24 hour operation. They stated that they didn't have any problems with building the condos. However, after the condos are built, we don't want anyone from the residential area complaining about us operating 24 hours a day seven days a week. The Board of Health stated conditions of approval to make sure that the buyers knew that there was going to be noise and odors. Triple pane windows and insulation on the back of the condos were supposed to be installed. The Board of Health had the foresight ten (10) years ago that there could be a problem. The question was how are we going to handle it ten (10) years from now when the people at the condos complain about the twenty-four hour operation? The Board of Health anticipated that there could be a problem, so everyone signed an agreement up front acknowledging that there would be noise and odors coming from the area. You had that study subcontracted by Mr. Scippa. An agreement was signed by the potential buyers. Empire Recycling has done some significant things. They have gone above and beyond. New Penn makes noises and no one contacts them. The fore sight by the Board of Health was there and was incredible.

Mrs. O'Rourke stated that apparently someone fell asleep at the wheel.

Mr. Dresser stated that he agreed. They condo association owns the special permit.

Mr. Reader stated that the developer did not hold up his end of the bargain and these people are paying for it. They do have a problem

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Mr. Dresser agreed. Mr. Dresser stated that this problem has been transferred to Mr. Motzkin. Mr. Motzkin has done a lot of things to reduce the noise. It is a recycle plant and it is a dirty operation. Everyone likes to recycle. The bottles and the paper have to go somewhere. Those conditions were created to protect these businesses when the approval was given to build these townhouses.

Mr. Reader stated it appears that the developer did not do what he should have done.

Mr. Dresser stated that Mr. Scippa was allowed to do that because the permitting departments did not ensure that the conditions were met.

Attorney Dangora stated that Mr. Motzkin should not be affected by what Mr. Scippa did not do. The Board of Health created these conditions ten (10) years ago for a particular purpose. They were to avoid an evening like this. The businesses were there before the condos were built. What amazes me is that they are still selling condos. They have an obligation to inform the new buyers of the situation. The condo association has an obligation to do what Rocco Scippa did not do. That is the condo association's responsibility not Mr. Motzkin's.

Mr. Reader commented Attorney Dangora has a valid point.

Ken Pynn, Chairman of the Board of Trustees, identified himself. Mr. Pynn explained that there is a simple solution. Obey the law. The Department of Environmental Protection (DEP) has four (4) stipulations that regulate the operation of a recycling transfer station. If Empire Recycling would obey the four (4) DEP regulations and the Billerica Noise Ordinance they would be a good neighbor. The solution to this is to obey the law. If those five (5) conditions were met they would meet the noise level of 50 decibels at night. If the noise level at night was restricted to 50 decibels there would not be a problem. Where was the building inspector and the engineer when the condos were being built? What happened to the 150 foot buffer zone? I met with Mr. Kinney years ago and he is no longer with the town. He had the responsibility to monitor the situation along with the engineer. If Empire Recycling would make a commitment to meet the four (4) DEP stipulations and the Billerica Noise Ordinance, I think the problem would be resolved. The condo association and I are not opposed to the recycling operation if the noise at night is 50 decibels.

Mr. Motzkin replied that is what we are trying to do. The condo association said that they were against the structure.

Mr. Pynn stated that he is speaking on behalf of the condo association and we are not opposed to building the structure. I do not know if it is going to help but it cannot hurt. If they obey the four (4) Zoning Board of Appeal (ZBA) conditions, the four (4) DEP regulations and the Billerica Noise Ordinance I think a lot of this will go away. Let's build the structure and see what happens.

Attorney Dangora stated that the ZBA decisions relate to the construction of the structure. Once the structure is built the conditions will be in place. We cannot put the conditions in effect until

the structure is approved. You never said that you were in favor of the structure being built. We can't put it into effect until it is approved.

Mr. Pynn stated that it is up to the Planning Board to approve the structure.

Dick Tracey, 14 Westgate Road, North Billerica, identified himself. Mr. Tracey explained that when the plan was originally approved for the condos, Rocco Scippa flipped the golf course so that he could sell more valuable property on the golf course. So instead of having the golf course between the industrial park and all the condos, he put the golf course on the side. Then to make matters worse he built a family room addition on the first two groups of condos closest to the industrial park. Mr. Scippa was supposed to put up the sound barrier fence and that fell through. So what killed the buffer zone was the moving of the golf course between the two condos. You can't blame the neighbors they signed a covenant. You should let Empire Recycling build the structure and then address the other issues.

Jeff Ladd, 205 Hancock Street, Stoneham, MA identified himself. Mr. Ladd explained that he has worked for Empire Recycling for six (6) years. I have been at Empire Recycling at 1:30 a.m. with one of the lead drivers and we have done everything to cut down the noise as much as we can. I was suspended because of making noise. We are doing everything we possibly can to keep the noise down.

Mr. Berube requested that everyone that has spoken please sign their name and address. Mr. Berube explained that we could probably be here all night discussing all the different issues, who is to blame and past mistakes that have been made. That is not going to resolve the matter. I have spoken with the Town Manager and proposed that a noise study be conducted since we don't operate twenty-four seven, we can't be there. The best way to get the facts straight is to have an independent noise study done. I am requesting that the Board authorize me to use the abatement money for this purpose. Then we can see where all the problems lie. We can see if New Penn is the source of the problem. We can make that determination and go forward from there.

Attorney Dangora introduced Attorney Lauren Liss. Attorney Dangora explained that Lauren Liss does some work for DEP and represents Empire Recycling. Lauren informed me that Empire is in compliance with the DEP regulations.

Lauren Liss explained that she was hired by Empire Recycling several months ago to help them with some issues with DEP regarding the regulations concerning the storage of this material. Empire entered into a consent order with DEP which brings them into full compliance with all the regulations. Part of what Empire was required to do and agreed to do under the consent order was to build the addition. We do believe that it will help with the noise issues. These owners were put on notice. Each and every deed has a notice stating that they are moving in next door to a loud, noisy 24 hour industrial operation. The Board did a great job ten (10) years ago. Empire Recycling is now in compliance.

Mr. Pynn stated that if Empire Recycling was operating their business at the level they were ten (10) years ago this would not be a problem. They have expanded their business significantly in the last

ten (10) years. This only satisfies one of the DEP requirements. There are still three more requirements.

Attorney Dangora explained that Empire Recycling is in compliance.

Mr. Pynn asked how they are in compliance with air pollution.

Attorney Liss explained that DEP looked at this situation and the issue that they found at the facility had to do with the way the waste material was handled and there was not in an enclosed structure. That is the only issue that DEP found and that is the only issue that they were cited for. We have entered into a consent agreement to fix the problem.

Mr. Pynn stated that the Board of Health did a test for air pollution and cited them for not being in compliance with air pollution.

Attorney Liss stated there is noise pollution and there is air pollution.

Mr. Pynn stated that air pollution is a health hazard.

Mr. Motzkin, Sr. stated that he did not think the Board of Health had cited them for air pollution.

Mr. Berube replied that noise and odor are both considered air pollution. Mr. Berube replied that the Board of Health cited Empire Recycling twice in the past. That is the reason why the deodorizers were installed.

Attorney Dangora stated that the ZBA odor conditions that you referred to cannot be done until we build the structure. We are trying to make it better. Phil Paradis from BETA Group is present and did the work for the Planning Board. Phil suggested that we pave behind the building. That was not a DEP condition. The Conservation Commission has approved the plan. The Planning Board is the only one that has not approved the structure.

Russell Bennett, Brick Hill Road, Strafford, New Hampshire, identified himself. Mr. Bennett explained that twenty (20) years ago he was the manager of that building and there were trucks coming and going all night every night. The operation ran 24 seven. It was owned by C & J Trucking with Sterling Packaging. At one point we had 200 tons of material outdoors. We used to run the excavators dropping material all night. I am currently the DEP inspector that goes in and takes pictures. I do spot inspections once a month. They never know when I am coming. That business has run twenty four hours a day for over twenty years and I ran the building.

Phil Paradis, BETA Group, identified himself. Mr. Paradis explained that the project was vastly improved. There was no stormwater management treatment on site. They are proposing some infiltration. The runoff at the rear of the building where they will pave will reduce the sediment going into the wetlands behind and also reduce the dust. Mr. Motzkin was a little apprehensive at first but when we educated him on the importance of protecting the environment, he was very much in favor

of it. We worked with Adam Bossi, the Director of Environmental Affairs and he was pleased with the project.

Mr. Frechette asked if the Board is going to vote on something tonight. Can we also have a motion for a link to the Town of Billerica website to send concerns immediately? I know you have an IT person that can create that link.

Mrs. O'Rourke replied that position has not been filled yet.

Mr. Berube replied that the Health Department has email addresses that you can send information to at any time.

Ms. Rhuda stated they are concerned with a link to the Town of Billerica website to log their concerns on but can they confirm that it is 100% Empire Recycling.

Attorney Dangora stated that is an issue. Can they confirm that it is Empire Recycling? Could it be somebody else? We want to work with them. Just let us build the structure and if it doesn't work then they can come back before this Board.

Mr. Berube replied I don't think we are in disagreement about building the structure. Empire Recycling has been very cooperative in the past. They have made some improvements to the site. It is a lot cleaner than it was several years ago. In order to bring this to a resolution we need to have a noise study done, identify where the problems are and what the violations are and proceed from there.

Attorney Dangora asked do you think the Board needs to consider additional conditions for notifying potential buyers of these conditions. Is there something more that they should do to notify buyers?

Mrs. O'Rourke thanked everyone.

Mrs. Giroux made a motion that first the Board recommends waiting on the Planning Board's decision for the structure at 36 Sterling Road and if and when that is approved what would be the time frame on how quickly can it be constructed. The second motion is that the condo association and the Board of Trustees look into putting in the buffer zone that should have been there in the first place. The third motion is that the Board of Health do a sound study after the structure is built then we can see where the problems are and who is creating them and then we can move on to the rest of the problems. We need to do this in steps.

Mr. Berube commented that the recommendation on the structure does not have any relevance to what we are discussing tonight. Our main focus should be on trying to find a resolution to the problem. The structure is only going to help. As far as a buffer zone, I think it is physically impossible at this point. We should just restrict the motion to the noise study and proceed from that point.

Mrs. Giroux stated that it does not make any sense to do the noise study until the structure is built.

Mr. Berube replied that whatever the results of the noise study is the structure is still going to be relevant.

Mrs. O'Rourke stated the structure is going to help and I think the buffer is going to help.

Mr. Motzkin stated that he did not think a buffer was going to be put in.

Mr. Berube stated that it is physically impossible to build a buffer, you can't move the buildings. You can't build a wall forty (40) feet high.

Mrs. O'Rourke stated maybe we can look into it. Someone fell asleep at the wheel.

Mr. Berube replied unfortunately we can't correct the mistakes of the past. The best way we can address it is to have the noise study done and proceed from there. After the noise study is done we will have all the facts. We will know where the violations are and where the problems lie and if there is multiple sources. It might not be just Empire Recycling it could be New Penn or somebody else. We need all that information before we start jumping to conclusions. Mr. Berube suggested that the motion be made to have the noise study done and go from there. Mr. Berube also requested that the Board give him the authorization to use the abatement money for this purpose.

Mrs. O'Rourke asked is there enough money to pay for the noise study.

Mr. Berube replied whatever we fall short on I will talk to the Town Manager to see if he would be willing to come up with the rest of the necessary funds.

Mrs. O'Rourke asked the Board Members their opinion of Rich's recommendation.

Mr. Reader agreed with doing the noise study.

Mr. Kane stated that ultimately no matter what has happened in the past the by-law is very clear that the source of the noise is responsible. If construction was not up to code or something was wrong with the plans that would be a problem. Both DEP and the Town By-Law make no mention of grandfathering in previous operations. It is very clear. If you violate the by-law you need to fix it.

Mr. Berube stated that this case is a nuisance. We have seen this in the past. We have seen it happen at the Peanut Factory. The first step in finding a resolution is to have the noise study done. Doing the noise study will provide a lot of answers. As you recall with OfficeMax when the noise study was done it proved very valuable in resolving that matter.

Mrs. O'Rourke asked Mrs. Giroux if she wanted to change her motion.

Mrs. Giroux asked what the Board's pleasure is. Mrs. Giroux explained that she thinks the Board ought to give Empire Recycling a chance to make the fix that they are willing to make without ordering it. I don't know how long the noise study will take and I don't know how quickly the construction will be done on the 3 sided structure. I think we are only delaying the process.

Mr. Reader asked what are we delaying.

Mr. Kane stated I don't know how the Board would have an effect on whether the construction starts or doesn't start.

Attorney Dangora explained that we were given a building permit and then we put the frame up and then we got a Cease and Desist. At that point someone realized that we should have gone to the Planning Board for a Site Plan Special Permit.

Mrs. Giroux stated so the noise study will be delayed pending the Planning Board's approval.

Mr. Berube replied we can proceed with the noise study right away.

Mrs. Giroux stated but don't you want to see if the structure has a benefit. Are you talking before and after bench point? I don't think it is going to fix everything.

Mr. Berube replied that the structure is going to be an improvement. I don't think the structure is going to have any real impact. The sooner we do the noise study the better because the weather conditions can have an impact on the study.

Mrs. Giroux asked how long will it take to get the results of the noise study.

Mr. Berube replied a two to three weeks.

Mrs. Giroux stated that she would change her motion. Mrs. Giroux withdrew her first motion. Mrs. Giroux made a motion to do the sound study at Empire Recycling at the Board of Health's expense and reconvene at the December 5, 2011 Board of Health meeting to discuss the results and continue the discussion.

Mr. Reader asked can the noise study be done that quickly and will the results be ready for the next meeting.

Mr. Berube explained that he has already spoken to several engineering firms.

Mr. Reader seconded. So voted unanimously.

Open Microphone

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

Mrs. Giroux asked Health Agent, Gary Courtemanche if any of the pre-schools were affected by the power outage.

Mr. Courtemanche explained that the three (3) pre-schools were affected by the power outage. The only complaint I received was from a mother whose child attended the Kinder Care Learning Center, 179 Boston Road, North Billerica. The complaint was regarding the milk that was being served to the kids. I investigated the complaint and even though the milk temperature was being monitored and was in fact good, the milk should have been discarded. I talked to the staff and explained that an over abundance of caution should be used when dealing with pre-school children.

No one in the audience was present for open microphone.

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

The Board adjourned at 9:15 p.m.

Respectfully submitted,

Sandra Giroux
Secretary

Joanne M. White
Recording Clerk