

**BOARD OF HEALTH MINUTES  
FEBRUARY 1, 2010**

Marie O'Rourke, Chair called the meeting to order at 7:30 p.m. Also in attendance were Robert Reader, Vice Chair, Sandra Giroux, Secretary, Fred Kenyon, Daniel Kane, Richard Berube, Director, and Joanne White, Recording Clerk.

**7:30 p.m. Karen Frawley – 13 Hearthstone Circle – Request for a hearing for 6 Hearthstone Circle**

Mrs. O'Rourke stated that Mr. and Mrs. Frawley, 13 Hearthstone Circle sent a letter to the Board of Health requesting to be placed on the agenda for the February 8, 2010 meeting. Mrs. O'Rourke explained that the reason for the special meeting was because the agenda for the February 8, 2010 Board of Health meeting is lengthy because of the McFarland Cascade hearing. Mrs. O'Rourke stated that anyone that wishes to speak, please state their name and address and please do not yell or use any profanity. Mrs. O'Rourke asked who would like to begin.

Attorney Richard Kendall, 348 Park Street, North Reading, MA identified himself. Attorney Kendall stated that he was representing Karen and James Frawley. Attorney Kendall explained that he was representing the Frawley's as a result of a situation that arose in May of 2009. In May of 2009 the Frawley's noticed an excessive amount of water coming from their neighbor's front lawn and running down the sidewalk in front of their home. The water was puddling and pooling at the end of the street by the catch basin and eroding some of the Frawley's property. Mrs. Frawley recalled that in the past Mr. and Mrs. Mitza, 6 Hearthstone Circle did some renovation or something to their property sometime between the summer of 2008 and the spring of 2009. Mrs. Frawley stated that when she was driving down the street she noticed some bubbling coming up out of the front lawn that she had never seen in the past. Mrs. Frawley stated that she had recalled in the past that when the Mitza's drained their pool at the end of the season that some of the water came out into the street and would go into the catch basin but it was a one time occurrence. This started to occur on almost a daily basis. The water was coming up out of the front lawn. In the summer of 2008 into the spring of 2009 the Mitza's had some work done on their property where they extended a deck. Now there is a discharge pipe that had

**BOARD OF HEALTH MINUTES**  
**FEBRUARY 1, 2010 PAGE 2**

been put through the front lawn causing the water to come out into the street and eventually go into the public catch basin. When the water runoff was drying it became obvious to the Frawley's and visitors to their home and their children that there was a white chalk buildup that was being left in front their home in addition to the erosion that was occurring in front of their home. Eventually, the Town of Billerica came out and put curbing in because of the erosion. Attorney Kendall explained that he had some pictures to show the Board. The water would come down from the Mitza's property run down the street past the Frawley's house and continue all the way down the street. You could see the dry product that was left in front of their home. Mr. and Mrs. Frawley asked the residents at 6 Hearthstone Circle if they could cease discharging the water because it was causing a problem with the white powder buildup. It appeared to be diatomaceous earth and some other chemicals. These chemicals were being tracked into their driveway and their home. They do have pets and children. Attorney Kendall explained and pointed to the pictures and areas of concern to the Board. This problem continued. On a couple of occasions Mr. and Mrs. Frawley asked Mr. and Mrs. Mitza's if they would be willing to stop backwashing. The Mitza's stated that they did not know it was causing a problem. The buildup was pointed out to the Mitza's by the Frawley's and in response Mrs. Mitza's wrote an e-mail on June 6<sup>th</sup> stating that her husband would be bullshit if that was in front of his house. So she is admitting in this letter that they are back washing their pool. On June 6<sup>th</sup> or 7<sup>th</sup> Mr. and Mrs. Frawley did a little research and looked on the Town of Billerica's website and it states that you cannot back wash unless the water is allowed to stand for at least a week and that the products that come out can not have more than 1 parts per million of chlorine. On the Department of Public Works website it states that you cannot discharge into a storm drain unless it is de-chlorinated swimming pool water. In Article 21 it talks about having underground or illicit discharge pipes and in Section 4 of Article 21 it talks about the product coming out of the discharge pipes. Mrs. Frawley then calls the Board of Health office and asks what can be done about this problem. At that time she did not give her name she just asked what could be done. The person that she talked to in the Board of Health office told her that you cannot continuously discharge pool water everyday it is against the Town of Billerica's By-Law. We would like you to call the Board of Health office and inform us when this happens. Mrs. Frawley started making the phone calls about the 6<sup>th</sup> or 7<sup>th</sup> of June. So Mrs. Frawley started calling the Board of Health office and made repeated phone calls. Mrs. Frawley has requested from the legal department at Comcast a list of all the phone calls made to the Board of Health office. We should have the record of all the calls that were made from the Frawley's to the Board of Health office in a few days to see when the calls where made and what the response was. Mrs. Frawley never got a response. I received a call at my office from Mrs. Frawley and she informed me that she had spoken to her neighbors. The neighbors went from initially emptying their pool only once a year earlier to now with the new discharge pipe they are discharging product out 3 to 4 times a day in a spiteful fashion and backwashing their pool. They are backwashing their pool, which does not abide by the Town of Billerica's By-Law which states that the water, has to stand for a week. The discharge pipe and the pollutants that are coming out of it are a violation. So on June 26, 2009, Mr. Frawley goes into the Board of Health office and fills out a written complaint stating that Mr. Mitza is backwashing his pool into the street, which is running in front of my house and sits there. It causes erosion of my front yard and is a nuisance. Erosion is in the by-laws and runoff can cause erosion. Nuisance is in the by-laws that states you cannot have water sitting because that causes a nuisance. On the 6<sup>th</sup> of July Mr. Berube and his assistant, Ms. Pheng came out to investigate the complaint. Mr. and Mrs. Frawley were home but nobody came and knocked on their door. This was about 11:30 a.m.

There wasn't any type of interaction with Mr. and Mrs. Frawley and Mr. Berube regarding the complaint investigation. However, Mr. Berube did talk to Mr. Mitza and had some conversation with him. About a month later on July 27<sup>th</sup>, Mr. Frawley went into the Board of Health office to request a copy of the report from the investigation. Mr. Berube told Mr. Frawley that the report wasn't ready. Mr. Frawley asked if he could show him what he had from the investigation. Mr. Berube told Mr. Frawley that he was very busy right now. Mr. Berube stated that he would send out a report in 10 days. Mr. Frawley left the office. Attorney Kendall explained that this is where it gets troubling to me because Mr. Frawley leaves the office. There is a situation that occurred back in June where more back washing was done and that led to a call to the Billerica Police Department which led to a report being filed and a variety of other issues that ultimately ended up in Lowell District Small Claims Court. There is an allegation of behavior filed against Mr. Frawley. Attorney Kendall explained that when he goes to court as an attorney, he is prepared with all the documentation that is needed to either assist in the prosecution of my client or to defend my client. I am hoodwinked when I am standing in front of the judge and I am handed an e-mail that gets entered into evidence that states that my client was in the Board of Health office and was acting irrationally, that he was ordered to leave and that the people felt threatened by him and he was dangerous. I looked at the notes from the file and it states that on July 27<sup>th</sup> at 11:15 a.m. Mr. Frawley visited the office to inquire about the status of the complaint. Attorney Kendall read the report that Mr. Berube had written. ***"I informed him of our findings. He requested a copy of the report. I indicated a copy will be sent out within 10 days."*** In the notes it does not state that Mr. Frawley was being belligerent or threatening or causing people to become afraid or anybody to be harmed by his actions or requests. Somehow there is an e-mail that was generated that ends up being used against my client in a civil court, which leads to a civil judgment against him for which we are currently appealing. It is very upsetting that this e-mail now appears in this case. I wonder where it came from and I wonder how this e-mail was justified. I made several phone calls. First I talked to Mrs. O'Rourke and fifteen (15) minutes later Mr. Berube called me. I made my concerns on behalf of my client. One of my concerns is that Diatomaceous Earth is a carcinogen and is known to cause cancer. It is proven. It is a silica based ingredient and unless someone goes out and inspects the pool and sees what type of filter that they have you don't know what levels of the diatomaceous earth is being discharged into the street. As you can see by the pictures that is not pure chlorine. I made those comments to Mr. Berube on the phone and his response to me was there are a 1,000 pools in Billerica do you want me to go out and inspect every one of the pools for illegal backwashing. I replied no, I am only concerned with my clients because there are chemicals being tracked into my client's home. The neighbors at 6 Hearthstone Circle are now discharging four or five times a day. We called the Board of Health office as my clients were instructed to do and did not get any response until this e-mail showed up in court. Attorney Kendall read the e-mail dated, September 4, 2009. ***"Hi, Bill. We closed this case back in July. Mr. Frawley of 13 Hearthstone Circle alleged that Jeff Mitza of 6 Hearthstone Circle backwashes his pool into the street where it puddles in front of his property. He further claims that it has caused erosion and discharges to the Town's stormwater system. We found no evidence to support his allegations. Mr. Mitza has drained excess pool water that accumulated from the precipitation that fell during the month of July. He discharges water to his front lawn. Any water that is not absorbed by the lawn trickles down to the cul de sac. We did not observe any sediment in the discharge. There is no direct discharge to the catch basin in the street. THERE IS NO VIOLATION. This matter stems from a neighborhood dispute. The police have reports regarding***

*altercations between these two parties. I understand Mr. Mitza is suing for damages to his front door caused by Mr. Frawley. Mr. Frawley has proven to be an irrational person. In dealing with Mr. Frawley, he has been quite belligerent to my staff. I will not allow him in my department. If you have any questions, please feel free to contact me. Enough said, Rich.*” This e-mail was written on Friday, September 4, 2009, this case was closed back in July. What prompts an e-mail thirty-six (36) days later to be generated? What prompts an e-mail that is then used to my client’s detriment in a court of law? Why is the paragraph that talks about causing damage to a door and people are suing each other used? How does that information end up in an interpersonal e-mail? I don’t understand that. The request was to come out and inspect the discharge pipe and the water in the street. Maybe on that day the street was dry and there was not a lot of water in the street. My photographs clearly show that on any one given day there is more than enough water there and there was more than enough erosion taken place so that the town felt the need to come out and put curbing in. The Town of Billerica By-Laws state you can’t discharge into a storm drain. I don’t know who has permission to violate the Town by-laws. I just retired but I was a police officer for twenty-seven (27) years and I know when we got a call in my community that someone was violating the city ordinances or the town by-law we had to act on it. I was a supervisor so I made sure that my officers acted on it. Police officers in Billerica don’t act on it. They say it is a civil matter. They don’t act on it despite the fact there are chemicals of unknown origin being discharged into a catch basin. It is not just against the Town of Billerica’s By-Laws but also against the Massachusetts Environmental Protection Agency Standards and the Federal Standards, and I have spoken to them. I also spoke to the Conservation Commission and they stated that you cannot discharge into a catch basin. I bring this whole entire thing full circle. My clients have a judgment against them. I have a pile of paperwork. I want to know where did this email come from? It is directed to the Town Manager and my information is that the Town Manager resigned last June and he was in an acting position for awhile and now he has gone off into retirement. It is a Friday afternoon before Labor Day and this e-mail is being written. I am concerned about this. I asked who requested this e-mail. My client told me that she received a letter from Mr. Berube on January 13, 2010 stating that he was directed through an inter-office memo from William Williams, the Town Manager for that memo. The inter-office memo is considered a public record, which the public has a right to examine. That memo was dated January 13, 2010. I thought I missed something and maybe there was a request that I missed. Maybe I did not receive it. I contacted Mr. Williams and he sent an e-mail on January 28, 2010. Attorney Kendall read the e-mail from Mr. Williams. **“Good Morning, I wish to advise you as the Town Manager of Billerica that I did not order or intervene in any way in the Health Department’s review of your case. I never exercised my influence at all. Any claims to the contrary are false. Any need to contact me my number is here.”** Attorney Kendall read another e-mail from Mr. Williams. **“I read the January 13, 2010 letter to you from Richard Berube and please be assured that on Friday, September 4<sup>th</sup> which was Labor Day and one week from my retirement I never requested an e-mail as claimed by Richard Berube. An appeal of Board of Health issues is to the Board. No one has the right to ban a person from the Town Hall offices other than the Town Manager. You will find no such authorization from me. I suggest that you advise me of any concerns of your position.”** That is from Bill Williams. That is from the gentleman that supposedly caused the inter-office e-mail to be generated and he does not know what we are talking about. Yet, it is generated and is detrimental to my client. There are two violations of the Town of Billerica’s By-Laws. There is a meeting here tonight for the 2 violations of the Town’s By-Law. What do I want from this

**BOARD OF HEALTH MINUTES  
FEBRUARY 1, 2010 PAGE 5**

meeting tonight? I want the illicit pipe to be taken out from 6 Hearthstone Circle because it wasn't there before. In checking with the Building Department, the Mitza's never pulled a permit to put an underground pipe in or a new patio and new deck in the back of their house. The water is going out through the front lawn and out into the street causing erosion and causing a nuisance in violation of the Town's By-Law and Article 21. Article 25 and 26 states that you cannot discharge into a catch basin unless the water is allowed to sit for a week and it is de-chlorinated water and has less than 1 parts per million. The discharge is going into the catch basin against the Town By-Law, against the Mass General Laws and against the Federal Laws. I want the pipe taken out. I want the pipe re-routed before next year. I want to know for my purposes and for the courts purposes when this appeal is heard as to where the authority came from to generate an inter-office memo alleged to be at the urging of a Town Manager, which it wasn't. That causes by client financial harm and causes me to be here at 7:50 p.m. at night arguing on behalf of my client and causing my client thousands of dollars to hire me for representation when there are violations of the by-laws left and right. There may not have been violations on that one-day but my client continually called and continually called and continually called. Then after this went to court my client walks in and asks for a copy of the file. She asks for a copy of the file and there are only six (6) pages in the file. Then she comes back recently and asks for a copy of the file and there are twenty-six (26) pages in the file of a case that was supposed to be closed, closed. The first time she requested a copy of the file the email isn't in the file. Then she requests it again and the email is still not in the file, the email that supposedly talks about his irrational behavior inside the Board of Health. The email is in the file today. The paper trail has all of a sudden started to be created. I suggest we come up with an easy solution as to how we are going to rectify it. My clients have already suffered enough harm. They have a judgment against them and their good name has been ruined. Their name appears in documents allegedly at the request of the Town Manager and he stated that he never asked for them. An investigation takes place and I make repeated phone calls to the Town's legal team in Boston and they told me they did not know what I was talking about and they told me to call the Town Hall. I called the Town Hall and spoke to Mrs. O'Rourke and we had a very nice conversation. She told me this should never have happened. About 15 minutes later Mr. Berube called me. Mr. Berube told me there are 1,000 pools in Billerica do you want me to investigate every one of them. No, I just want you to investigate the pool that is discharging chemicals out into the street that could be potentially causing harm to the Frawley children and any other children that play at the end of the cul de sac and to everyone that visits that neighborhood. Do I know for a fact that it is a carcinogen product, I don't but I know that it is not just chlorine that is sitting in the street and when it is being discharged 2,3, 4 times a day just to stir up a neighborhood dispute. That is malicious and vengeful and it is wrong and that is what was been done to my clients and it can't happen. So I would like some solutions tonight in this room. I don't think this has to go any farther than this room. I would like that pipe out of there and reroute it. I want this to stop. I don't want this taken under advisement until next spring and see what happens. What they are doing now is wrong. You can drive up to the front of the house and see the pipe buried under the front lawn. The pipe does not belong there. It belongs in the back of the property or somewhere it can be discharged and would not be harmful to children, pets and anyone that visits the neighborhood. The Town felt so bad that they put curbing in because it was eroding their property. My clients are taxpayers and they have just the same rights as everybody else. But for some reason their concerns fell on deaf ears and they got one investigation. One investigation and this is the result. Attorney Kendall stated that he would answer any questions the Board may have.

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

Mr. Kane stated that he would like to hear the rest of the discussion before he asks any questions.

Mr. Kenyon stated you mentioned that Mr. Mitza is backwashing his pool five (5) times a day. Diatomaceous earth is very expensive and I don't think any pool needs to be backwashed that often because I had one. I don't go with that.

Mrs. Giroux stated she would wait until she has heard the rest of the discussion.

Mr. Reader stated so what you would like tonight is to stop the discharge and remove the pipe.

Attorney Kendall replied yes. That is a minimum. I need something from the Town of Billerica when this goes to appeal. When this goes to appeal Mr. Berube will be a witness because his letter was introduced into court against my client. He is the author of this letter. So he will be in court as a witness. I would like some type of a retraction. I wouldn't go as far as to say an apology because it is based on his factual findings. It painted my client in a very unfavorable light to the judge. To the point where the judge just had enough when she read this letter. It made my client sound like he was some irrational monster that was screaming and yelling about water being discharged into the street and pounding and breaking a door, which isn't the case. We have our own separate issue involving the door, which will be explained in the appeal. Mr. and Mrs. Frawley are outstanding members of the community. I am looking for the pipe to be removed. I want the discharge pipe to be rerouted. I would like an investigation to find out where the permits are for the large pipe to be put in the front lawn and the permits for the patio and deck out back. Why can't they discharge the water out to the back of their property? Mr. and Mrs. Frawley discharge their water out to the back of their property. Why does it have to go out to the street? Why do you have to see the buildup so that it gets tracked into their house? I want the pipe removed and the discharge stopped and some semblance of a remedy for when I have to go to court. Lowell District Court will tell you that their Small Claims Court is backed up two to three years for hearing this appeal so it is going to be awhile. In the meantime there is an adverse judgment against my client where interest is being accrued on a daily basis. Part of the reasoning and rational by the judge is this letter that was introduced which is wrong, totally wrong. I want something from either the Board or the Town.

Mr. Berube asked Attorney Kendall if he had the judgment where it claims that the decision was based on that email.

Attorney Kendall replied that he did not say that the judgment was based on the email.

Mr. Berube stated that is what you are inferring.

Attorney Kendall replied absolutely, I am inferring that. I do not have the judgment with me.

Mr. Berube stated that he would like to see the judgment that states based on that email that is the reason the judge ruled in favor of the Mitza's.

Attorney Kendall replied that it does not state that in the judgment.

Mr. Berube replied so you are making an inference right now.

Attorney Kendall stated that he was making an inference, which is used in a Court of Law. That is the only document that was introduced in the trial other than the testimony from Mr. Frawley and Mr. Mitza. That is the only document that was introduced in the Court. I do have a copy of the appeal that was filed on the 2<sup>nd</sup> of October with the District Court in Lowell.

Mrs. O'Rourke asked if Mr. Mitza was present.

Mr. Mitza stated he would move the pipe. The problem is that Mr. Frawley came to my door and we had argument. That is how this whole thing started. I will move the pipe. That drainpipe has been there for thirty (30) years. If the Board would like to have someone check it out, I don't have a problem as long as it is before the spring so that I can reseed. I know what Mrs. Frawley is talking about we had some trees in front of the pool and we had them removed so you could not see the pipe before. The drainpipe has been there for thirty (30) years.

Mr. Reader asked how come the water didn't drain into the street before.

Mr. Mitza replied I did not know it drained into the street before June 6<sup>th</sup>.

Mr. Reader asked why you didn't correct it. Why did it have to come to this?

Mr. Mitza explained we thought we did. I replaced all the pool filter components. I did not know what it was. I am not a pool specialist. I have all the receipts and the confirmation of the delivery of all the parts that were replaced to rectify the problem. Those pictures were taken June 6<sup>th</sup>. I was just as concerned as the Frawleys. We were down there soaking it up. What's done is done. The main thing is we did do our part. Afterwards the pool was backwashed and something happened where the water came down to the bottom of the street. Water pooled down the end of the street it was just clear water, no white stuff, no dirt.

Mr. Reader asked so after June 6<sup>th</sup> you stopped backwashing your filter.

Mr. Mitza replied that he backwashed only once a week. Everybody has to backwash.

Mr. Reader stated so the diatomaceous earth did not stop going on to Hearthstone Circle on June 6<sup>th</sup>.

Mr. Mitza replied if that is what it was. No one actually saw the diatomaceous earth. Common sense would say it could be.

Mr. Reader stated I saw the diatomaceous earth there. I am not a rocket scientist but I know you know and everybody else knows that it was diatomaceous earth.

Mr. Mitza stated it was only on the street. We changed the filter components and the gasket. There are holes in those pictures that you will see. The natural rules of drainage on that street do not apply to those pictures. Mr. Mitza explained the location of the house, the pool and the Frawleys. The street pitches down toward the Frawley's. The pool drains in between the Frawley's and the Mitza's house. The pool draining would go from where the pool is to in front of the house and down to the Frawley's. It would not go down my driveway. Those pictures are showing water coming from my driveway whether we are washing cars or cleaning something off.

Mr. Reader stated that the white film would not have been there from washing cars.

Mr. Mitza asked then what is the white film.

Mr. Reader replied that white film is diatomaceous earth.

Mr. Mitza stated that nobody knows that for sure.

Mrs. O'Rourke asked do you have a de filter.

Mr. Mitza replied yes, but that was only one day. Mr. Mitza stated what started all this was one day Mr. Frawley came pounding on my door.

Mrs. O'Rourke stated that is not the issue. I do not want to hear that.

Mr. Reader stated a neighborhood dispute is irrelevant.

Mr. Mitza stated he would not move the pipe unless someone asks me to do that. I am trying to do what is right. They are shaking their heads and laughing, that is the type of attitude they have.

Mr. Reader stated they would not be here if they thought this was funny.

Mrs. O'Rourke asked Mr. Mitza to please state his name and address.

Jeffrey Mitza, 6 Hearthstone Circle, Billerica, MA.

Mrs. O'Rourke asked Mr. Mitza how did you receive this email that everybody is talking about.



**BOARD OF HEALTH MINUTES  
FEBRUARY 1, 2010 PAGE 9**

Mr. Mitza replied my attorney had it with the file at the hearing. The firm is O'Brien Law Offices of Billerica, MA.

Mr. Reader asked when was the court date.

Attorney Kendall replied September 24, 2009. I have a backwash log of all the phone calls that my client made to my office and the Board of Health. Attorney Kendall stated all the dates that the calls were made on June 5, 6, 7, 25, 26, 27 twice, July 28, August 2nd twice, 9.

Mrs. O'Rourke asked Attorney Kendall where did you get that information from.

Attorney Kendall replied from my client calling me.

Mrs. O'Rourke asked if the Board of Health has a complaint book and is every complaint logged in the book.

Ms. White replied yes. The book is in the office.

Mr. Berube asked what are you referring to a call log or a complaint log.

Attorney Kendall stated my client called the first time on the phone.

Mrs. Frawley explained that on June 6<sup>th</sup> she called on the phone and explained what was going on. The water is coming down and there is a discharge on the street. The woman that I spoke to said if there is a discharge on the street that might be something but I cannot tell you unless I investigate it. I told her that I did not want her to do that because they are my neighbors. I am not going to do that. That was on Friday. Over the weekend we had some problems and they kept doing it and kept doing it. That is when those pictures were taken. So on Monday, June 8<sup>th</sup> I called and said it is me again I am sorry they didn't listen I have to file a complaint. She said okay and took my name and address and their name and address and that was all we heard. We didn't hear anything from the Board of Health.

Mr. Frawley said that the woman said to call every time they were backwashing.

Mrs. Frawley stated then we called her back because we hadn't heard anything. She told me to call every time they were backwashing. I was calling and I felt really bad because I left messages on the weekend. She said don't feel bad that is our job. The backwash log is not complete because I assumed that she was keeping a record of my calls. I did not want to be picky.

Mrs. O'Rourke asked so every time you called the office and made a complaint that Mr. Mitza was backwashing it was logged in.

Ms. White stated that she did not speak with Mrs. Frawley.

**BOARD OF HEALTH MINUTES  
FEBRUARY 1, 2010 PAGE 10**

Mrs. Frawley explained that she did not talk to Ms. White until recently. Most of the time I left a message on the weekend or during the morning I spoke to someone. A few times that I called I know I spoke to Phavy.

Ms. White explained that she would transfer the calls to Health Agent, Phavy Pheng. Ms. White explained that when she transfers a call it does not get logged in a book.

Mrs. O'Rourke asked so when she talks to Phavy it gets logged in a book.

Mr. Berube explained no, we don't record every single call. We are not the police department.

Mrs. Frawley explained that Phavy told me to call every time. I asked Phavy if she was recording every call that I made and she said absolutely. I had thought the Board of Health had called the Mitza's. I was under the assumption that the Board of Health had called the Mitza's and they were not supposed to backwash until the investigation was completed. I asked Phavy if the Mitza's knew they were not supposed to be backwashing and Phavy told me of course they know. According to his report I don't think the Mitza's knew until July 6<sup>th</sup> about the complaint. All this time we were under the assumption that they knew that they were not supposed to be backwashing because that was the information I was given from the Board of Health.

Mrs. O'Rourke stated so Phavy told you that she logged the calls.

Mrs. Frawley stated that Phavy told her that she logged every single time I called.

Mrs. O'Rourke asked where would Phavy log that information.

Ms. White replied that she could not answer that question because she did not know.

Mrs. O'Rourke asked would it be in the complaint book.

Mr. Berube explained when the complaint was written we started the complaint. That is when we started to do anything. What happened before that date I can't answer.

Mrs. O'Rourke asked what about after that. Mrs. Frawley said every time they backwashed she called and Phavy told her she logged every single call.

Mr. Berube replied I don't know if Phavy logged every single call. Basically I think what was said was call if they are backwashing and if there is someone available we will try to come and witness it happening.

Mrs. O'Rourke asked if we have a complaint book and she called with a complaint every time, it should be logged in the complaint book. Mrs. O'Rourke asked Mr. Berube to explain how the log book works.

**BOARD OF HEALTH MINUTES  
FEBRUARY 1, 2010 PAGE 11**

Mr. Berube explained that is not how the log book works. When a complaint is filed that is when we start the complaint and start tracking things.

Mrs. O'Rourke stated that Mrs. Frawley was told to call every time and to me every time means that a complaint is logged.

Mrs. Frawley stated that June 8<sup>th</sup> was the first official complaint.

Mrs. O'Rourke asked to see the call list of complaints.

Mrs. Giroux asked how many calls did you make after June 26<sup>th</sup>.

Mrs. Frawley replied I don't know. After June 26<sup>th</sup> we probably didn't call because we assumed it was in writing. When he first went into the Board of Health office on June 26<sup>th</sup> Mr. Berube looked at the pictures and said those were possible fineable offenses. We thought it was out of our hands and we were done with it. They were still backwashing. After they came out on July 6<sup>th</sup> we called and no one answered our calls. Nobody called us back.

Mrs. Giroux asked did you make calls after July 6<sup>th</sup>.

Mrs. Frawley replied yes, but no one called us back. We didn't hear from anyone. We didn't receive any correspondence at all.

Attorney Kendall stated it was mentioned that the problem was only on June 6<sup>th</sup> or June 7<sup>th</sup> these photographs are date stamped June 27<sup>th</sup> and there is water sitting, so it wasn't just a June 6<sup>th</sup> or June 7<sup>th</sup> problem that Mr. Mitza referred to.

Mr. Reader asked Mr. Frawley did you receive a response on July 27<sup>th</sup> from the email that was sent on July 26<sup>th</sup>

Mr. Frawley replied no, that is when I went to the Board of Health office in person and inquired about a report. I was told that I would get the report in ten (10) days.

Mr. Reader stated so you didn't get a response to the email on July 27.

Mr. Frawley replied no, I had to go down, I asked for some one to call and no one called so I went down to the office and asked for the report. We waited for almost 2-3 weeks for some one to get back to us after they did their inspection and no called us or sent a response. I sent the email that I wanted to hear something or I would go to a higher authority like the Board or whomever. I went down for the report, which still wasn't done and I was told I would get it in ten (10) days, which I did get in ten (10) days but that was thirty (30) days after the inspection and that was after I had to send an email. At the top of your complaint forms it says that you can make a complaint by phone, in person or in

writing. We called and made one a complaint phone. It is our responsibility to do that and it is the Board of Health's responsibility to make out the complaint form when we called. We gave them all the information about the complaint including the names and addresses. We called and they should have taken care of it.

Mrs. O'Rourke stated that the last time you called was sometime in September.

Mr. Frawley replied the reason there is a space on the backwash log after the 7<sup>th</sup> is because we thought that the Board of Health office was keeping track of it because they said they were. So we stopped tracking it because they said they were doing it and that is why you see the space from the 7<sup>th</sup> to the 25<sup>th</sup>. When saw this wasn't happening we started keeping track again.

Mrs. O'Rourke stated so if these are all complaints they should be in the complaint book, is that not correct.

Mr. Berube stated we never received these calls.

Mrs. O'Rourke asked how do you know that.

Mr. Berube replied I think I would know.

Mr. Frawley stated we will have our phone records in three days with all the days that we called and the time that we spent on those calls.

Mrs. O'Rourke stated so they should be in the complaint book. If Phavy told her that she was logging in the calls in the complaint book.

Mr. Berube replied the complaint had been closed.

Mrs. O'Rourke stated if Mrs. Frawley kept calling and we were doing our job in the office, those calls should have been in the book.

Mr. Berube replied they say they made all these calls, I am not aware of all those calls.

Mrs. O'Rourke asked Mr. Berube if he was aware of all the calls.

Mr. Berube asked what calls are you referring to.

Mrs. O'Rourke stated all the calls that the Frawleys are talking about.

Mr. Berube stated that he does not know all the conversations that Phavy had. What was related to me was that after we had done the inspection on July 6<sup>th</sup>, one or two days later Phavy told me that

she had spoken to Mr. Frawley and informed him of what we found at the inspection and Phavy related to me that Mr. Frawley was not satisfied.

Mrs. O'Rourke asked Mr. Frawley if that was correct.

Mr. Frawley replied that is not correct, I never received a call from anyone at the Board of Health. No one called me or came to my house. We filed the complaint and no one called us or came to our house. We were the ones complaining and no one called us and we had to do all the chasing and looking for this and looking for that.

Mr. Kenyon asked didn't the Board of Health talk to Mr. Mitza.

Mrs. Frawley replied on July 6<sup>th</sup>.

Mr. Mitza replied Mr. Berube did not call me, I saw them outside.

Mrs. Frawley stated that he left a calling card and it said to call him back.

Mrs. O'Rourke asked Mr. Berube if July 6<sup>th</sup> was the only time he went to Mr. Mitza house.

Mr. Berube replied yes, that was the only time.

Attorney Kendall stated that he left numerous phone messages for Mr. Berube to call me back. In my utter frustration on September 3<sup>rd</sup> at 3:46 in the afternoon I spoke to someone in the Town Managers office and they told me that someone would get right back to me. Twenty (20) days later I had to call and I spoke with Mrs. O'Rourke at 2:15 p.m. that was after I spoke to Phavy. Mrs. O'Rourke told me that she did not know anything about the problem. She didn't know what I was talking about. Mr. Berube handles the case he is investigating. On September 23 between 2:30 and 2:45 I spoke to Mr. Berube on the phone and he told me there was no evidence and the case is closed. Then he went into do you want me to investigate all the illegal backwashing in Town. I asked him are you speaking on behalf of the Town of Billerica because I am concerned about illegal discharge taking place. Mr. Berube stated yes, I feel quite comfortable with what I am speaking about. I think that is a pretty libelous position to be put into as the agent in charge of the Board of Health that when I am calling as an attorney and saying that my clients are being harmed by an illegal discharge pipe by chemicals coming out of it causing erosion and a nuisance against by-laws and going into a catch basin this is a huge concern. I gave this concern to Mr. Berube over the telephone in fifteen (15) minutes of conversation. My response was nothing. Then I get this email in court and that was obviously against my client's best interest. I am very concerned about that. Then I was told that the email on Friday before Labor Day was prompted by a Town Manager that had less than a week to go and he flatly denied it. That is a huge concern of mine.

Mrs. O'Rourke stated that she talked to Mr. Williams the other day and there was nothing in writing. Mr. Williams emailed me at my office in the Town Hall and asked me what is going on at

Hearthstone Circle. I emailed Mr. Williams back and told him that I did not know but I would talk to Mr. Berube. Which, I did. Mr. Berube told me that the case was closed and it was all taken care of. That was the end of the conversation. There was nothing in writing that went to Mr. Williams that precipitated the email.

Mr. Reader stated you said the file had six (6) pages in it.

Attorney Kendall replied initially when requested.

Mr. Reader asked when did you request the file.

Mrs. Frawley replied when I originally asked for a copy of everything in the file. I received twenty-five (25) pages. I found that there was no request from Mr. Mitza in the file. The next day I went back and asked for everything that Mr. Mitza received and in it were five (5) pages. When Mr. Mitza requested the file on September 15<sup>th</sup> the case was closed. In July there were only five (5) pages in it the file. When I requested it last week there were twenty-five (25) pages in it. The file grew.

Mr. Reader asked how did that happened.

Mr. Berube replied the file did not grow. When Mr. Mitza's attorney came in they looked through the file and requested only certain pages. That was all that was requested from the file and that is all he took.

Mr. Frawley stated that Mr. Mitza's request is for the entire file not some of it.

Mrs. Frawley stated that she asked for everything that was in the case.

Mr. Reader asked if the case was closed in July how did the file grow from six (6) to twenty-six (26) pages.

Attorney Kendall asked why would a file have a copy of the plot plan. I am not sure why a copy of the plot plan would be in a Board of Health file. I am not sure why a copy of what the property value of the house was when it was sold would be in a Board of Health file. The request that was filed by Mr. Mitza September 10<sup>th</sup> stated that he was given five of six pages. When my client requested the entire copy of the file in January there was twenty-six (26) pages in the file and she paid \$5.20. A letter was sent by Mr. Berube on January 26 stating that the total cost of duplicating the entire file at twenty cents a page is \$5.20. That wasn't the whole file before. In the file before was only five (5) pages. I don't understand how these twenty (20) pages magically appeared.

Mr. Berube stated they didn't magically appear they were there from the beginning. Most of the pages came from the Frawley's file.

Mr. Reader asked Mr. Berube why was that email sent to Bill Williams.

**BOARD OF HEALTH MINUTES  
FEBRUARY 1, 2010 PAGE 15**

Mr. Berube replied because he requested it. I stand by that. Otherwise, I would not have any reason to write that email at all.

Mrs. Giroux asked did he request it via e-mail.

Mrs. O'Rourke stated that when she called Bill Williams I asked him why was he interested in Hearthstone Circle, he stated that could not remember. He told me that maybe a selectman called him about it. He told me to check with Susan, his secretary. I called Susan and she could not find anything. Someone could have called him but he did not remember.

John Curran, the new Town Manager, identified himself. Mr. Curran explained that he was not the Town Manager when this incident occurred. The email that was sent to Mr. Williams is not really part of this case. We have been advised by Town Counsel not to talk about the email. I sympathize with the neighbors. It is a terrible thing to dispute with your neighbor and end up in court over it but that is not the Town's business. The Town's business here today is from what I have heard there seems to be some inconsistencies about policy in terms of what constitutes a formal complaint and what doesn't. What happened with this complaint and what should we do in the future with this particular property is to make sure that the home owner is duly notified of what regulations and codes they have to abide by in the future. Beyond that we should stick to the issues that the town is involved with which is the discharge of the water, public safety and the codes and regulations.

Mr. Frawley stated it was a civil matter until Mr. Mitza produced an email that showed up in court. It was a civil matter between us until an email that he generated that came from her email account to someone who did not request it and ended up in court. It is a Town issue. We have a multitude of issues here tonight. We are dealing with the backwashing and I think we can settle that tonight. This is a serious matter and I understand that Town Counsel has instructed you, but it is an issue that isn't going to go away just because we are not dealing with it tonight. It is going to continue because he thrust himself and put his two cents worth into an email that was used saying I was belligerent and a number of other things and that showed up in court. They decided that they wanted to use that as evidence against me showing what a crazy guy I am and they ended up winning the judgment. So the Town is involved and is going to stay involved until we come to some sort of resolution to this whole thing. It may not happen tonight but if it doesn't happen tonight this is going to continue until there is a resolution and it is going to cost everyone time and money until there is a resolution.

Mr. Curran stated clearly the Town wants to resolve the issue with the code and the alleged backwash tonight. We want to resolve that and it needs to be done tonight. As far as the legal issues you have with your neighbor it is not the Town's business. We are not going to comment on it or get involved. Documents like that are matters of public record and anyone can request them. How it got out is not really germane to the issue. What is germane here is that the Town is not going to get involved.

**BOARD OF HEALTH MINUTES  
FEBRUARY 1, 2010 PAGE 16**

Mr. Kane stated that he agreed with Mr. Curran. Certainly, the scope is beyond that of the Board of Health. Before us today is the regulatory piece of was there or was there not a violation and what we need to do about it. I agree that there are some significant concerns that have happened in this entire case but from my perspective of our charter as a Board it is beyond the scope of the Board to address the most significant issues that are being presented to us. Dealing with the violations are certainly a concern of our policy and procedures and what needs to happen on the part of the Board and the Department. Those things are administrative that need to be dealt with so that nobody else goes through the paperwork challenges that happened with this case. But we are pretty limited on what our scope and our responsibilities are as a Board. We can probably come up with a solution for those things. I sympathize with the issue from both sides but I really think it is beyond the scope of the Board that we address all the issues.

Mr. Mitza stated he would move the pipe.

Tom Lavery, 11 Juniper Circle identified himself. Mr. Lavery asked if it is not a Board situation why did that email come from the Board.

Mr. Kane stated that he would answer that question. That email did not come from the Board, it came from one of the staff members.

Mr. Lavery commented that it came from one of the Board Members.

Mrs. O'Rourke replied no, it came from someone in the Board of Health office downstairs. Mrs. O'Rourke explained that the Board does not work in the Health Department. We all have other jobs. We are volunteers. Mrs. O'Rourke explained the positions of the Board of Health staff that work in the Board of Health office.

Mr. Lavery asked for clarification of how that letter got out if it was from a member of the Board.

Mrs. O'Rourke replied she did not know how that letter got out.

Mr. Lavery stated that it is not a representative of the Board but it is from a representative on the Board.

Mr. Kane replied no. Mr. Kane explained the Board consists of five appointed members of the Board of Health for the Town. The volunteers are appointed positions as opposed to the full time professional staff of the Town. It is like the difference between the Board of Selectmen and the Chief of Police. Our Chief of Police is a full time paid employee of the community. The Board of Selectmen are stipend but they are elected representatives of the community. They have oversight responsibility but they don't have ultimate authority over the Chief of Police and how he runs his department. We are in the same position. We are responsible for regulatory authority and we approve the regulations to meet our Town By-Laws. But as far as an individual member of our staff whether he is correct or



**BOARD OF HEALTH MINUTES  
FEBRUARY 1, 2010 PAGE 17**

incorrect in his actions and I am not making that decision, needs to be dealt with from the Town Manager as our personal director to an employee of the Town. They are paid employees of the community. We are the Board who also has the regulatory authority, which is why appeals come before us. That is what we are doing here tonight. He is an employee of the Town who is fulfilling the role that has been handed to him. He is not a member of the Board he is an employee of the Town.

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

Mr. Berube stated that he would like to speak on this matter. Mr. Berube explained that Mrs. Frawley mentioned that she made a call to the office sometime in June and asked some questions but did not want to file a complaint at that time. We did not become actively involved in this complaint until it was filed in writing. We went out and did an investigation and I stand by the investigation. As I said before Health Agent, Phavy Pheng had a conversation with Mr. Frawley and verbally told him what we found. We deal with approximately three hundred (300) complaints a year and we needed to handle other complaints that required our attention. We have been dealing with the McFarland Cascade case and at that time we were devoting a great deal of time to that particular case. This case was of low priority. This was not like a septic system that was overflowing to the surface of the ground. We are talking about pool backwash, which we found no evidence of at the time when we conducted our investigation. We closed the investigation and moved on. They mentioned that diatomaceous earth is a carcinogen. Mr. Berube explained when it is in its powder form it is harmful to your health if you inhale it. Once it gets put into a filter machine and becomes caked it is no longer in a form where it can be inhaled and be dangerous to anyone. When we were there we saw no residue on the front lawn or anything out in the street to indicate that diatomaceous earth was being discharged out into the cul de sac. If we did we would have taken further steps.

Mrs. O'Rourke stated after you made the initial visit out there and Mrs. Frawley kept calling you never went back. Phavy told her to call every time it happened and Mrs. Frawley said that is what she did and you never went back out to investigate.

Mr. Berube stated that he could not verify that we received those calls. I don't know who they spoke with or who took the call. I would have to speak to Phavy. If we did receive additional calls then I do have a concern with my agent.

Mrs. O'Rourke asked to see the book.

Mrs. Giroux asked to see the complaint log.

Mrs. Frawley stated that when she went to the office she went through the book with Ms. White and no complaints were in the book. That is why we were scrambling to get the Comcast phone records to prove that we called when we said we called. It has to go through the legal department and we should be getting the records within the week.

Mr. Frawley stated we will have a list of every call we made to your office.

Mr. Berube stated if there were multiple calls it would show up in the file not in a log book.

Mrs. O'Rourke asked why did Phavy tell Mrs. Frawley that she logged it. Where did she log it?

Mrs. Frawley stated that she did not only speak to Phavy, she left messages.

Mrs. O'Rourke asked Mrs. Frawley if she spoke to Angela.

Mrs. Frawley replied she did not know. I know I spoke to Phavy but I don't know anyone else that I spoke to. I asked Phavy if he was backwashing on the weekend or after hours what do I do. Phavy told me to leave a message and I did that. I do not know if Phavy got the message.

Mrs. Giroux asked how are the weekend calls dealt with.

Ms. White explained that we have voice mail so when I come in on Monday morning, I listen to the messages and if it is a complaint I transfer the call to the either Phavy or Angela whoever they belong to. I listen to the messages first.

Mrs. Giroux stated I did not know if you wrote the messages in a log book.

Ms. White explained I used to do that and when we got voice mail they told me do not log our calls in a book, transfer them to our phone line.

Mrs. O'Rourke asked so you do not have a complaint book.

Ms. White replied are you talking about a telephone book.

Mrs. O'Rourke stated if I call down to the office with a complaint what do you do with the complaint.

Ms. White explained when a call comes into the office I transfer the call to the agent that handles that particular complaint.

Mr. Berube stated the initial complaint is logged. If the same person is calling about the same thing it is just recorded within the complaint itself.

Mr. Reader asked when you did your initial investigation did you have him backwash his filter while you were there.

Mr. Berube replied yes.

Mr. Reader asked did you watch him backwash or did you stay in the street. There is a difference.

Mr. Berube replied that he was in his filter room with him when he did it.

Mr. Reader stated he backwashed the filter and nothing came out to the street.

Mr. Berube replied yes and then I walked out to the street.

Mr. Kenyon stated according to the police report he was taking excess water out of the pool. Having had a pool like that I know you can take excess water out of the pool without backwashing. So he could of said he was backwashing his pool but he was actually pulling water out so you wouldn't see the earth.

Mr. Berube stated the complaint was that he was backwashing his pool so I had Mr. Mitza demonstrate that to me.

Mr. Kenyon stated he may not have understood and he was back flushing it.

Mr. Berube stated that he understood how a pool gets backwashed. I inspect pools so I know how it is done.

Mr. Kenyon stated could he have just been drawing water out of the pool so that you wouldn't have seen the diatomaceous earth. That is possible. You don't know what levers he was pulling on the pump to get the action to happen.

Mr. Berube stated that he stood there and watched him.

Mr. Kenyon asked did any earth come out.

Mr. Berube replied no.

Mr. Kenyon stated then he wasn't backwashing his pool. Dirt has to come out if he was back washing. He was pulling water out of the pool to reduce the level and he did not want to waste his filter material so he by passed the filter and dumped the clean water on the grass. After you left and the police left then he backwashed his pool so he just pulled the right lever and out came the diatomaceous earth.

Attorney Kendall stated that he made multiple calls to speak to Mr. Berube and I got Ms. Phavy on the phone and she stated he is out in the field. Could you give me a time when I can speak to him? Ms. Pheng told me to call early in the morning or later in the day. So I tried early in the morning and later in the day and never got in touch with him. Out of frustration I called the Town Managers office and they directed me to Mrs. O'Rourke. Magically within 20 minutes I received a call from Mr. Berube. Yet, I had left and my office staff had called repeatedly and was told that Mr. Berube was out in the field. I called repeatedly and got the same response that Mr. Berube was out in the field. I left my name and phone number and never got a call back until I spoke to Mrs. O'Rourke.

**BOARD OF HEALTH MINUTES  
FEBRUARY 1, 2010 PAGE 20**

Mr. Berube stated that was the first time he had received the message that he had called.

Mr. Reader stated that every complaint should be handled the same because it might be a low priority to you or to me but for someone that is filing a complaint it is a high priority. It is their problem.

Mr. Berube replied I have only a small staff and we only have so much time. We do the best we can with each complaint.

Mr. Curran stated that in the interest of time, I think we should move on in a positive direction. There are two issues as I stated before. Clearly, there is an issue with the way complaints are handled in the Board of Health. They have to be handled as written complaints at the beginning or if they are going to be accepted over the phone or by email a log has to be kept. Mr. Frawley came into my office a couple of nights ago. I keep a log in my office. The log states when he called, when he came in and what took place. It is very helpful to me particularly in a situation like this. There is a lot of he said she said going on that we will never be able to get to the bottom of. We definitely know that there is an issue with the way we are handling the complaints out of the Board of Health. As a solution to this I would like to suggest that I sit down with the Board of Health Director and implement a policy, which is the source of all the frustration that is the response and confusion. Come up with a policy that they can follow from this point forward. I did hear that Mr. Mitza stated that he would move the pipe and that would rectify the situation in the up coming season. This event will be documented and a letter will be sent to Mr. Mitza and Mr. Fawley outlining the fact that the pipe is going to be changed and that will bring them into compliance if there were any issues or not. We should concentrate on moving forward as opposed to what happened in the past, learn from this and change our policies. I will sit down with Mr. Berube and we will put together something for the Board so that you will know what those policies are and how they are going to be handled in the future.

Mrs. O'Rourke stated that this is the first time we have had this type of a problem it is usually handled very quickly. I have been on this Board for twenty (20) years. Maybe we do need some revamping in the Board of Health office because I think that everybody should be treated the same. We should keep the same records for everyone. They asked for this hearing and I thought they should be able to speak freely and say what they had to say and that is what we did. I am glad that Mr. Mitza is going to move his pipe.

Mr. Frawley stated I appreciate that and it is a very nice gesture. I hope that he would do that. We would also respectfully request that the illicit discharge pipe that is there right now underneath his deck that is facing out to the street also be excavated out so that it can never be used again. We feel that the health and safety of our children are at risk. I want the backwash system that he has now directed out towards the back of his property so that it does not go out towards the street or any one else's property. I want it approved by someone other than just Mr. Berube because I do not trust him to do this. I want to the make sure it is done and done properly. I want the pipe that is there now excavated and taken out for the health and safety of our children and everyone in the neighborhood. Those are the requirements that we have at this time.

**BOARD OF HEALTH MINUTES  
FEBRUARY 1, 2010 PAGE 21**

Mr. Mitza stated if someone wants to pay for the pipe to be excavated that is fine. That pipe has been there for thirty (30) years and there are a lot of roots and everything else wrapped around the pipe.

Attorney Kendall explained that it states in the Town By-Laws that a discharge pipe is not legal. That is in Article 21. It does not talk about anything that is grand fathered in.

Mr. Mitza stated that you are suggesting that we installed the pipe last year. We did not, that pipe has been there for thirty (30) years. It also states in the By-Laws and commission that you cannot drain backwash into wetlands which is what they are doing and I am not bringing that up either.

Mrs. Giroux stated one issue at a time.

Mrs. O'Rourke stated lets not start on another issue. We will not do that.

Mr. Mitza stated I want to get this over with. I made an offer but I don't want to rip up my yard.

Mr. Reader replied you might have to.

Mr. Mitza stated show me something that states that what I am doing is illegal.

Mr. Reader stated this could have been corrected a long time ago you know that as well as I do.

Mr. Mitza replied it was. I wasn't friendly with them before. He came pounding on my door and broke my door.

Mrs. O'Rourke asked that a motion be made.

Mr. Mitza asked if he could make one more statement for the record.

Mrs. O'Rourke replied yes.

Mr. Mitza stated there is a backwash label on the filter that says it was backwashed which Mr. Berube was shown it wasn't just waste. The filter was on backwash. Then we both went out to the street and let it run for a good half hour and the street was soaked. I want this on record.

Mr. Kenyon asked where the diatomaceous earth comes from that is shown in the pictures.

Mr. Mitza explained that the discharge is seventy-five (75) feet to one hundred (100) feet before the street on my grass. The pipe is probably about five (5) feet in front of the white fence and that is where the pipe comes out of the ground. The lawn acts as a filter before it reaches the street. The storm drain is one hundred fifty (150) feet away.

Mr. Kenyon stated if you have been backwashing your pool for thirty (30) years and your lawn is filled with thirty (30) years of diatomaceous earth is has to go somewhere.

Mr. Reader asked why isn't your grass white if the diatomaceous earth is coming out on to the grass first.

Mr. Mitza replied that is what I am trying to say that is my point.

Mr. Reader stated this is diatomaceous earth.

Mr. Mitza replied we don't know that.

Mr. Reader replied you know that and I know that.

Mr. Mitza stated how it is diatomaceous earth. That is the exact argument that I had with Mr. Berube when he first came out. I apologize for that. Mr. Mitza pointed to the pictures and explained the flow of the water and how it comes out. Mr. Mitza stated it is in the police report. Mr. Mitza read the police report "***Mr. Mitza does drain his pool run off water into his front lawn approximately seventy-five (75) feet from the road.***" That is from the police officer not from Mr. Frawley and not from me.

Mr. Reader asked why the diatomaceous earth isn't there.

Mr. Mitza replied that is the point nobody knows.

The audience laughed.

Mr. Mitza stated this is the attitude they have.

Mrs. O'Rourke replied because they are frustrated.

Mr. Mitza explained the pictures and the water coming down the street. Mr. Mitza stated that he was told by his attorney not to discuss any issues at the meeting. We had a lot of work done on the house and I have all the receipts from the work that was done. It could be sheetrock dust, it could be anything. Mr. Mitza explained the pictures and the water flow into the street.

Mrs. Frawley stated that in the police report Mr. Mitza told the police officer that my husband had put some debris in the driveway to filter the water. Mrs. Frawley explained one of the pictures. That is the debris that he said my husband put in the driveway.

Mr. Frawley explained that the pipe is not seventy-five (75) feet from the street.

**BOARD OF HEALTH MINUTES  
FEBRUARY 1, 2010 PAGE 23**

Mr. Mitza stated it is in the police report. Mr. Mitza pointed to the pictures and explained the flow of the water.

Mr. Kenyon asked did you recently change the filter.

Mr. Mitza replied yes we changed the guts to the filter and I have the receipts.

Mr. Reader asked when did you do have all the work done with the sheetrock.

Mr. Mitza explained it went on all summer. We had a big addition put on the year before and we had to tear out the basement so the following year we did all the renovations to the basement.

Mrs. O'Rourke stated it is too bad that we did not have a sample of the white sediment tested.

Mr. Kenyon asked if the Board could continue the case until the spring.

Mrs. O'Rourke replied no. Mrs. O'Rourke asked the Board Members if they had any other questions. Mrs. O'Rourke asked Mr. Berube if he had any comments.

Mr. Berube stated there is two ways you can deal with this. Mr. Mitza has offered to move the pipe or you can connect the pipe to some sort of subsurface drainage system and that will accomplish the same result.

Mrs. O'Rourke stated that Mrs. Giroux was ready to make a motion.

Mrs. Giroux made a motion to have Mr. Mitza remove the pipe and have a system of drainage for the pool approved and in place by the spring. The second part is for the Board of Health to conduct an internal review of its policies and update them.

Mr. Reader seconded.

Mr. Berube asked Mrs. Giroux what she meant by internal review.

Mrs. Giroux explained the call logs and how we deal with complaints internal and in a public hearing so that this does not happen again.

Mr. Beurbe stated that he would like to explain how the complaint process works. On average we receive about three hundred (300) complaints a year. About a third of those we send out a Notice of Violation and an Order for Correction. Anyone that receives the Notice of Violation has the right to a hearing. About fifty (50) complaints receive a warning letter. The rest of the complaints are relatively minor and are resolved fairly quickly or no evidence is found to substantiate the complaint and the complaint is dropped.

Mr. Reader asked you said they are entitled to a public hearing.

Mr. Berube replied if we issue a Notice of Violation and Order for Correction they are entitled to a hearing.

Mr. Reader asked how come they were denied.

Mr. Berube replied this case did not reach that level. An order wasn't issued.

Attorney Kendall stated that he knows that the motion is on the floor. My concern is that the motion states that there will be some sort of a guarantee that there could be some type of administrative town action in Mr. Mitza does not remove the pipe. I trust that Mr. Mitza is not going to reconnect that pipe. I want something in the public forum on the record that there is something in the motion that the pipe can not be reconnected.

Mrs. Giroux stated that she is sure that Mr. Frawley would contact us if there a discharge.

Mr. Frawley stated we cannot go on the property to check the pipe.

Mr. Reader stated the motion is to remove the pipe.

Mrs. Giroux stated the motion is to remove the pipe if anything happens I am sure you will contact us immediately. The question was if the pipe comes back.

Mr. Mitza stated the original request was to disconnect the pipe not remove it.

Mrs. Giroux reiterated that the motion was to remove the pipe.

Mr. Mitza stated it is not going to happen unless someone is going to pay for it. I will fill it with concrete.

Mrs. Giroux stated her motion was on the floor.

Mr. Mitza stated especially when it has been proven to be wrong. I have a letter.

Mrs. O'Rourke stated all those in favor of Mrs. Giroux motion.

Mr. Berube stated before you take a vote I would like to reiterate that Mr. Mitza made an offer to disconnect the pipe or have it connected to a subsurface drainage system. That would probably be the best thing to do. If Mr. Mitza is going to oppose removing the pipe because it may be very costly his only recourse would be to go to Superior Court after this. I don't think we are going to be prepared to fight a battle in Superior Court.



Attorney Kendall stated you may have to.

Mr. Curran stated there is some volatility to that issue. The Town wants to avoid any type of litigation. If there is a solution that can avoid litigation that is the path you should take. That is one way you can avoid resistance.

Mrs. O'Rourke stated if it is that simple tell me how can he connect it to some system.

Mr. Berube explained excavate the front of his yard and put some type of drywell in or some type of infiltrator chambers and connect the pipe to that and back fill it.

Mrs. Giroux asked isn't there still excavation involved.

Mr. Mitza replied yes but I will not have tear up the entire front yard and the concrete pad.

Mrs. Giroux asked would you be agreeable to Richard's plan.

Mr. Mitza stated I can do that or I can fill the pipe with concrete. I am not quite sure why all that is necessary.

Mrs. O'Rourke replied because we want to keep the water and the diatomaceous earth off the street.

Mr. Mitza explained that he is going to put in a new pipe and reroute it.

Mr. Reader stated they have concerns about how things were conducted in the past. I don't blame them for having concerns that the problem will return.

Mr. Mitza stated I can understand that and appreciate it. However, this was a one time occurrence. The water may have happened more than once. It is not like it has been happening for years or weeks. This was one time event. We can't see their property so I didn't know that and I apologize for being ignorant to the fact. It is the way the street drains. The white sediment is a problem. That is why we thought it may be the filter so we replaced all the filter parts. I don't have a problem with moving the drain pipe. To rip out my patio and everything else I think that is asking quite a bit.

Mr. Kenyon asked can we amend the motion.

Mrs. O'Rourke stated this is Sandra's motion. Mr. Frawley would like to speak. We are going to bring this hearing to a close.

Mr. Frawley explained that the problem is that he had an opportunity to stop backwashing when we told him about it back in June. We asked him to please stop you are making a mess. But he continued to backwash for five (5) months. The water just sits there for three (3) or four (4) days after

**BOARD OF HEALTH MINUTES  
FEBRUARY 1, 2010 PAGE 26**

and we had to look at that mess for five (5) months because of the pipe that is facing out to the street. Trust me when I say that. I think it is a health and safety risk. I think that Sandra's motion is correct. Remove the pipe and reroute the discharge pipe to the back yard.

Mr. Mitza stated the water may have come more than once but the sediment was only a one (1) time thing. The reason why there was so much tension because he didn't come to the door and say I am sorry. He used a disgusting choice of words that led to all this. I am still willing to do the right thing.

Attorney Kendall stated if this wasn't a residence and it was a commercial piece of property and there was a hazard pipe underneath the ground I think the Board would recommend that the pipe be removed regardless of how long the pipe was there whether it was gas or some other chemical. This is a hazardous chemical that is flowing through the pipe whether it would start again in the future, I don't know. If this were any other toxic site in the Town of Billerica whether it would be a gas station or a residence they should not be treated differently. The pipe should be removed out of the ground.

Mrs. Giroux stated that her motion could be voted down and another motion could be made.

Mrs. O'Rourke asked Mrs. Giroux to make her motion again.

Mrs. Giroux made a motion to have Mr. Mitza remove the pipe and have a system of drainage for the pool approved and in place by the spring and the Board of Health conduct an internal review of its policies.

Mr. Reader seconded. So voted unanimously. So moved

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

Mr. and Mrs. Frawley thanked the Board Members.

The Board adjourned at 9:00 p.m.

Respectfully submitted,

Sandra Giroux  
Secretary

Joanne M. White  
Recording Clerk