

**BOARD OF HEALTH MINUTES  
FEBRUARY 8, 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.

**ACCEPTANCE OF MINUTES**

Mr. Kenyon made a motion to accept the Meeting Minutes of December 7, 2009.  
Mr. Reader seconded. So voted unanimously.

**CORRESPONDENCE**

**Billerica Community Alliance – Billerica Health and Recreations Fair 2010**

Mr. Berube explained that he received a letter of correspondence from the Billerica Community Alliance, which he would like to bring to the attention of the Board. A Health and Recreation Fair will not be held in 2010 because over the past two (2) years it has become increasingly difficult to raise the necessary funds that are paid for by the sponsorships of the major donors as well as the fees paid by the exhibitors to host the event. The turnout from the public has also declined. The Committee will be looking into other options for a 2011 event. Mr. Berube asked the Board if they had any questions.

**Billerica Recycling Contest**

Mrs. O'Rourke asked if everyone has a copy of the guidelines for the Billerica Recycling Contest sponsored by the Department of Public Works.

Mr. Berube explained that the recycling contest is for anyone that would like to participate.

Mr. Reader asked wouldn't it have to be someone that recycles a lot.

Mr. Berube replied if you know of a person or household that deserves to be recognized for their recycling efforts you can nominate them.

Mr. Reader asked how would you know if they recycle a lot.

Mr. Berube explained if you see a lot of recycle bins or barrels filled with recycle items and they are properly labeled and stacked.

Mrs. O'Rourke explained the application has guidelines for the general public to follow.

### **BOARD OF HEALTH BUSINESS**

#### **Flu Update**

Mrs. O'Rourke stated the first item under Board of Health Business is the Flu Update.

Mr. Berube explained that the report from Christine West, the Public Health Nurse explains the four (4) health clinics that were held this fall/winter. The first two (2) clinics were for Seasonal Flu, the third (3) one was for the Seasonal Flu and the H1N1 and the last one was for just the H1N1. All the flu clinics had a tremendous turnout. Most of the staffing were volunteers and everyone did a commendable job. We would like to recognize the Police Department and the Billerica School Department for notifying the public using their "Reverse 911" system. We would also like to thank the Department of Public Works for using the electronic sign boards. We had a great deal of support from some of the other Town departments.

Mrs. O'Rourke asked if Ms. West is all through with the flu clinics and can somebody still get a flu shot?

Mr. Berube replied that if anyone needs a flu shot they can contact the nurse or come to the Board of Health office and she will give them shot or they can make an appointment. If there is a demand for another flu clinic then we will schedule one.

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

The Board Members did not have any questions.

#### **Proposed FY2011 Budget**

Mrs. O'Rourke stated the next item is the Proposed FY2011 Budget. Mrs. O'Rourke asked Mr. Berube to explain the two (2) proposed budgets.

Mr. Berube explained that at the request of the Town Manager's office we have prepared two (2) proposed budgets for Fiscal-Year 2011. One proposed budget has a reduction of 1.25% and the other

has a reduction of 2.75%. The cuts have come out of our part time account. The part time account is dedicated for a Senior Clerk. We have not filled that position at the request of the Town Manager. That was the most logical place to make the budget cut.

Mrs. O'Rourke asked if the Board Members had any questions about the two (2) proposed budgets.

Mr. Kenyon asked when will you know which budget is going to be used, the 1.25% or the 2.75%.

Mr. Berube replied that he did not know. Mr. Berube explained that he had a meeting with John Curran, the Town Manager and Paul Watson, the Town Accountant and reviewed the budget. At this time we do not know if there is going to be any further cuts from the State aid. We might have to revise these budgets if there is any further cuts.

Mrs. Giroux asked what won't get done.

Mr. Berube stated that right now the department is still intact except we do not have the Senior Clerk's position. We still have some money left so that we can hire a part time Senior Clerk for a few hours a week but not the twenty-five (25) hours a week that we originally had. Hopefully no further cuts will be necessary.

Mrs. O'Rourke asked if anyone else had a question.

The Board Members did not have any further questions.

### **FY2009 Annual Report**

Mrs. O'Rourke stated the next item is the FY2009 Annual Report that will go into the Town of Billerica Report book.

Mrs. O'Rourke asked about the 810 Building Permit Reviews.

Mr. Berube explained that is how many building applications the Health Department reviews in the course of a year.

Mrs. O'Rourke asked does that mean that the Building Department issued 810 permits or is that just the permits that come to the Health Department for review and approval.

Mr. Reader asked is that below or above the average year.

Mr. Berube replied in the past couple of years we have seen quite a few building permits so that is about average.

Mrs. O'Rourke asked what Health Club has the Permit been issued for.

Mr. Berube replied that is for Pro-Fitness.

Mrs. O'Rourke asked about the other two (2) health clubs that are coming into Billerica.  
Mrs. O'Rourke asked will they be coming before the Board.

Mr. Berube replied they get permitted through the office as an administrative function. This report is for Fiscal-Year 2009. Anytime Fitness just opened recently and they have already received their permits. Another fitness club will be opening on Innis Drive. We have already reviewed their plans and they will be coming before us for their permits.

Mr. Reader asked where are the other two (2) health clubs located.

Mr. Berube explained that Anytime Fitness is in the Brick Kiln Plaza on Route 129 and the other one is going to be located on the corner of Innis Drive in the red barn that used to be George's Furniture Store.

Mrs. O'Rourke stated that she did not realize that the Health Department issued thirty (30) Horse and Barn permits.

Mr. Berube explained that Billerica used to be a rural community with quite a few horses and farms in the area. There is a significant amount of horse lovers in Billerica.

Mrs. O'Rourke asked if any of the Board Members had any other questions about the annual report.

Mr. Kenyon asked what is a Mantoux Test.

Mrs. O'Rourke replied a Mantoux Test is a TB Test.

#### **OM Temple Update**

Mrs. O'Rourke stated the next item is the OM Temple Update.

Mr. Berube explained that if you recall the OM Temple appealed the Conservation Commission's denial to Department of Environmental Protection (DEP), subsequently DEP has denied the project. The applicant is now appealing DEP's denial. They are trying to work out a settlement. Enclosed in the Board's package is a copy of the new plans that they have submitted to the Health Department. The original project was out by the river. They have pulled everything out of the riverfront area and as you can see on the plans it will be a lot closer to Boston Road. This project will be coming back before the Board. There are still significant Flood Plain and Stormwater Management issues that need to be addressed.

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

The Board Members did not have any questions.

**Beaver Control Report**

Mrs. O'Rourke stated the next item is the Beaver Control Report.

Mr. Berube explained as you can see by the report we had a busy fall season. We had to replace a number of water level control devices because of age. With all the precipitation we had in the summer and fall we had a lot of flooding issues to address. We also performed a great deal of beaver trappings throughout the Town.

Mrs. Giroux asked what is the cost of the "At Risks" on the Beaver Site Status Update.

Mr. Berube replied it is all site specific because the device has to be customized for each particular site. The average cost is two thousand (2,000) dollars per site.

Mrs. Giroux asked do we have the funding for those repairs.

Mr. Berube explained it is covered in the Conservation Commission's budget.

Mrs. Giroux stated so the items will be replaced.

Mr. Berube replied yes, we have plans to replace the fences. Mr. Berube replied the Conservation Commission has the line item for Beaver Control expenses.

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

The Board Members did not have any questions.

**Water Conservation Committee Update**

Mrs. O'Rourke stated the next item is the Water Conservation Committee Update. Mrs. O'Rourke asked Mr. Kenyon if he would update the Board.

Mr. Kenyon explained that the Committee met on January 20, 2010. John McGovern was present and explained to us that he is working on the permit that is required by DEP which allows us to take the water out of the river. John provided us with copies of the Water Conservation's questionnaire for Public Water Suppliers. It is a fourteen (14) page document asking many involved questions on what the Town is doing for water conservation. We reviewed the document with him. John is looking at the census that is being taken now and anticipates that he will see a significant increase in Billerica's

population. There is a concern that the sixty-two (62) gallons per day per person will be lowered. We are requesting that the Selectmen approve a Mandatory Level 2 water ban to be in effect from May 1<sup>st</sup> to September 30<sup>th</sup>. There is a plan to invite the editor of the Billerica Green newspaper to our March meeting. We are hoping that an article will be in the newspaper about outdoor conservation for the spring and one for indoor conservation in the fall and winter. Water use will be reported in February/March once all the data has been collected and calculated. At the end of the meeting John gave us a tour of the Water Treatment Plant. Mr. Kenyon commented that the water plant is amazing.

Mr. Berube asked has the committee explored an alternative source of water supply.

Mr. Kenyon explained that the committee has looked into the MWRA. They have looked into other towns that are on the MWRA to see how we could connect into them. We purchased two (2) large pumps that would allow us to connect to another Towns water source. We are looking into ways to get into other areas for water.

Mr. Berube asked what about public water supply wells.

Mr. Kenyon stated that has not been discussed.

Mr. Berube suggested that maybe with some of the open space that the Town of Billerica owns maybe they should look into installing public water supply wells to supplement our water supply or to be used as an emergency backup.

Mr. Kenyon replied that he would it bring that up at the next meeting.

Mr. Reader asked what is the closest town to Billerica that is involved in the MWRA.

Mrs. O'Rourke replied Wilmington.

Mr. Kenyon stated the MWRA is very expensive. It costs a lot of money just to get into the MWRA and then the rates are very expensive.

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

The Board Members did not have any questions.

### **Planning Board Review of Subdivision Rules and Regulations**

Mrs. O'Rourke stated the next item is the Planning Board Review of Subdivision Rules and Regulations.

Mr. Berube explained that Peter Kennedy, Director of Planning sent a memo stating that the Planning Board is reviewing the Subdivision Rules and Regulations. Peter is requesting input from other

Town Departments. I have given you a copy of the memo I sent recommending that Peter revises the design standards to make them consistent with the Massachusetts Department of Environmental Protection Stormwater Management Regulations and the Town of Billerica Stormwater Management By-Laws and also try to include guidelines that encourage the implementation of Low Impact Development (LID) techniques which is an important part of Stormwater Management as well.

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

The Board Members did not have any questions.

**400 Charter Way – Proposed Auto Auction Facility**

Mrs. O'Rourke stated the next last item under Board of Health Business is 400 Charter Way Proposed Auto Auction Facility.

Mr. Berube handed out plans of 400 Charter Way for the Board Members to review. Mr. Berube explained and pointed to the two (2) buildings and the proposed Auto Auction. They are going to use the existing building and create parking on the land behind Swanson Woods off Rangeway Road. The proposal is going before the Zoning Board of Appeal (ZBA) and I will be submitting comments on this project to the ZBA. There are a large number of concerns such as flood plain issues and stormwater management issues. The building is served by a septic system so I will be looking at the existing system to see if it is adequate for the proposed use. I will also be looking at the building because they are interested in putting a food service establishment in the building for their customers. The review will be quite extensive.

Mrs. O'Rourke asked where will the cars be stored

Mr. Berube replied the cars will be parked outside the building and the auction will be held inside the building.

Mr. Reader asked how many parking spaces are at the site.

Mr. Berube replied approximately two thousand (2,000) parking spaces.

Mrs. O'Rourke stated so they will drive the cars inside for the auction.

Mr. Kenyon asked is this part of Swanson Woods.

Mr. Berube replied no.

Mr. Reader explained the proposed location is after Currcilum Associates.

Mr. Berube explained it is close to the intersection of Rangeway Road and Sterling Road.  
Mr. Berube explained that this project will probably be coming before the Board in the near future.

Mr. Reader asked where is this auction currently located.

Mr. Berube replied on the Lynnway, in Lynn, MA. There isn't enough parking so this is a good move for them.

Mr. Kenyon asked is this going to be near the Aspen Apartment project.

Mr. Berube replied yes.

#### **Aspen Apartment Project**

Mr. Berube explained an appeal has been filed with the Aspen Apartment project and it is in land court. The project has been remanded back to the ZBA. As soon as more details are available I will get back to the Board because I will need some feedback as to how you want to proceed with this project. Several months ago I informed the Board that I had several concerns with this project and I sent a letter to the ZBA and never received a response.

Mr. Reader asked is this because the Chelmsford residents appealed the decision?

Mr. Berube replied yes.

#### **Billerica Power Plant Project**

Mr. Berube explained that the Billerica Power Plant Project will not take place. It was published in the Lowell Sun that the investors have walked away from the project.

#### **7:45 p.m. Town of Billerica – East Billerica Sewer Extension, Contract 34B – Request Modification of Waiver of Regulations**

Mrs. O'Rourke stated the first hearing on the agenda is the Town of Billerica, East Billerica Sewer Extension Contract 34B requesting modification of Waiver of Regulations.

Mr. Berube explained that the Board had granted a Waiver of Regulations in September 2008 for this particular sewer contract. The applicant is looking to redesign the project and that is why they are here tonight requesting a Modification of the Waiver of Regulations.

Justin deMello, Woodard and Curran, identified himself and explained that he was representing the Town of Billerica, Department of Public Works. As Mr. Berube mentioned we were here in September 2008 when the initial design was completed. After the design was completed we encountered some unforeseen shallow bedrock, which was under the MBTA railroad in East Billerica, which



prompted us to continue the design of finding an alternate route because it would be too costly and would cause too much of an impact on the railroad to continue on that proposed sewer path. We looked at some alternatives like modifying a portion of the route to utilize the existing railroad crossing. What that entailed was to send the sewer through some additional wetlands and the Green Engineering Flood Plain. Mr. deMello pointed to the map and explained the proposed route. So in summary this presentation has two parts to it. One is to perform the subsurface investigational borings within the flood plain in order to determine if the secondary route is feasible. If that route is not feasible then we will have to continue with the original sewer design. The second is the request for an extension of Sewer Contract 34B order of conditions.

Mrs. O'Rourke asked Mr. deMello if he was referring to the bridge that goes over Andover Road near the railroad crossing.

Mr. deMello replied that is correct that is the initial point of crossing. Mr. deMello pointed to the area and explained it would be southeast of that area. The additional crossing was to take place at the end of Ross Road over to Lampson Lane. The proposal is to redirect the flow and connect to an existing crossing at the end of Charme Road.

Mrs. O'Rourke asked is all that going to be taken up by the pump station at George Brown Street.

Mr. deMello replied yes. There is approximately five (5) miles of gravity sewer that we are trying to direct to the George Brown Street pump station.

Mr. Kenyon asked how certain are you that after you perform the borings is it going to be a feasible route.

Mr. deMello replied that at this point without knowing what is under the ground we are more certain that it is a better route than what we were going to do before. The ledge we encountered was approximately three (3) feet below the railroad tracks. The sewer line was close to twenty (20) feet. There is very little hope that we could get that done especially when you are dealing with the high-speed commuter line that brings people in and out of Boston on a ten (10) minute schedule. We are still performing investigations. We are more certain that this route is going to work. Typically, the soil is soft and because it is a lower area, the sewer will be much shallower. The sewer will only be eight (8) feet down instead of the twenty (20) feet that we were looking at near the railroad tracks.

Mrs. O'Rourke asked if the Middlesex Canal was involved at all.

Mr. deMello explained that the Middlesex Canal is part of a larger project. Mr. deMello pointed to the Middlesex Canal on the plans and explained the flow of the Middlesex Canal along Towpath Road. A portion of the Middlesex Canal was abandoned when they built up East Billerica. Mr. deMello pointed and explained how this project will be able to avoid most of the Middlesex Canal. Mr. deMello stated that we are looking for permission to enter the flood plain to perform the proposed investigational

borings and request an extension for the original Contract 34B order of conditions because the existing permit is going to expire.

Kelley Conway, Town Engineer identified herself. Ms. Conway stated if this works out as far as the borings go we could redo the sewer down Carley Way. It is a dry sewer right now and we would like to tear it out and replace it as part of a new project.

Mr. Berube explained that we had several meetings regarding different alternatives and this appeared to be the least invasive of all the alternatives. Hopefully the exploration work will be successful. I would recommend granting them the modification and also an extension to the Waiver of Regulations and any subsequent revisions to the sewer plan.

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

Mr. Reader asked if the Sewer Contract 34B has been funded.

Mr. Berube replied no. Mr. Berube suggested to the Board that they may want to grant a longer period of time for the extension because of the current state of the economy and we are not sure when this will be brought forward to Town Meeting for funding approval. The Board may want to consider extending the Waiver of Regulations for five (5) years instead of two (2) years. It is strictly up to the Board.

Mr. deMello stated that he would come back in two (2) years for another extension if necessary.

Mr. Kane made a motion to grant a modification of the Waiver of Regulations to the Town of Billerica, Department of Public Works for work within the flood plain for Sewer Contract 34B issued on October 7, 2008 as well as a five (5) year extension as follows:

- 1) The Board of Health authorizes the Town to perform subsurface explorations within the flood plain to determine the most feasible route for the proposed sewer line extension.
- 2) This approval shall extend to any changes made to the plans for Sewer Contract 34B as a result of the proposed investigational borings.
- 3) Any revisions to the plans for Sewer Contract 34B shall be submitted to the Board of Health.
- 4) The Waiver of Regulations #08-024 will be extended for a period of five (5) years to October 7, 2015. All other conditions of the original waiver will remain in full force and effect.

Mr. Kenyon seconded. So voted unanimously.

**7:50 p.m. Odette Leone – 12 Springwell Road – Request Variance for work within 25 feet of the Flood Plain**

Mrs. O'Rourke stated the next hearing is Odette Leone, 12 Springwell Road requesting a Variance for work within 25 feet of the Flood Plain.

Joel Williams, Dresser, Williams & Way, identified himself. Mr. Williams explained that he was representing Odette Leone. Mr. Williams introduced Bruce Hughes, the builder. The plans have been slightly revised. We appeared before the Conservation Commission and out of that hearing they requested that the building be shortened from twenty-six (26) feet to twenty-four (24) feet from left to right that would bring the construction within eleven (11) feet from the FEMA Flood Plain instead of the original ten (10) feet from the FEMA Flood Plain. The variance request is to obtain the Board of Health's permission to construct this addition within eleven (11) feet of the FEMA Flood Plain. There will be no filling or disturbing of the flood plain. The flood plain is from the Shawsheen River.

Mrs. O'Rourke asked what the addition is going to be used for.

Mr. Williams replied it is going to be used as a bedroom. Mr. Hughes can explain the details of the addition.

Bruce Hughes identified himself. Mr. Hughes explained that the addition is going to be for Mrs. Leone to move into and be closer to her daughter. She is getting older and needs some assistance. There will be two (2) bedrooms, a ¾ bathroom along with a sitting area for Mrs. Leone and a home health aid if necessary. It is going to be attached to the existing home and there will be a common area that connects the addition to the main part of the house.

Mr. Kenyon asked is it going to have a full basement.

Mr. Hughes replied there will be a full basement.

Mrs. O'Rourke asked does the house have a full basement.

Mr. Hughes replied yes. The basement will be the same height and will be on the same level and the connection will be on the same level. It is a one (1) story addition.

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

Mr. Berube explained if you notice the basement floor elevation is still higher than the flood plain elevation. Mr. Berube asked Mr. Williams on the original plans there was a storm trench around the foundation and I don't see it on the revised plans, has that been eliminated.

Mr. Williams replied yes that was eliminated by the Conservation Commission.

Mr. Berube asked is the dwelling connected to town sewer right now.

Mr. Hughes replied it will be connected the same time the addition is being constructed.

Mr. Berube stated that the Board will make that a condition.

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

No abutters were present.

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

The Board Members did not have any questions.

Mr. Reader made a motion to grant a variance to construct an addition within twenty-five (25) feet of the Flood Plain at 12 Springwell Road based on the following findings of fact and pursuant to the following conditions:

#### **FINDINGS OF FACT**

- 1) The work described in the applicant's request is within an area subject to protection under the Board of Health's Rules and Regulations, Chapter 5, Section 5.5.005 (1).
- 2) The applicant proposes to construct an in-law addition to the existing single family dwelling. The existing dwelling is serviced by town water and an on-site sewage disposal system.
- 3) The proposed addition will be located within approximately eleven (11) feet of the FEMA Flood Plain. There will be no filling or work within the Flood Plain.
- 4) The Board of Health has determined that the actions proposed by the applicant are adequate measures to protect the public health and environment and complies with the intent of Board of Health Rules and Regulations. Further, approval of the applicant's request will not be detrimental to the public health and environment.

#### **CONDITIONS**

Standard conditions number 1, 2, 3, 4, 5, 6, 9, 10, 11, 12, 13, 14, 15, 18 in accordance with the Board of Health regulations and Special Conditions:

- A) All construction must be in accordance with plans submitted for review and approval, prepared by Dresser, Williams & Way, Inc. dated December 21, 2009, and revised January 28, 2010 and stamped by Joel Williams, R.P.E. #29522.

- B) The dwelling shall be connected to sewer by a licensed installer as soon as practicable and prior to the approval of an occupancy permit by the Board of Health. Documentation shall be submitted to the Board of Health as proof of compliance with this condition.

Mr. Kenyon seconded. So voted unanimously.

**8:00 p.m. Beth Downer – 9 Brittany Lane – Request Variance for work within 25 feet of the Flood Plain**

Mrs. O'Rourke stated the next hearing is Beth Downer, 9 Brittany Lane, requesting a Variance for work within 25 feet of the Flood Plain.

Joel Williams, Dresser, Williams & Way, identified himself. Mr. Williams explained that he was representing Keith and Beth Downer. Mr. and Mrs. Downer would like to construct an in-law addition onto their house. What makes this a unique variance request is that their request is but it isn't a variance request. Content Brook had a shallow alignment. When Content Brook passed under Whipple Road there was a small culvert and on the downstream side of Whipple Road it just dropped down like a water fall. Mr. Williams explained that when he worked for Camp, Dresser & McKee he did a FEMA Flood Plain study in Billerica. Many years later when Dan Kindred built the subdivision I noticed that Content Brook had greatly changed. A huge pipe arch culvert was installed underneath Whipple Road. This was done by the Town's Engineer Ralph Bacon. Having knowledge of what used to be Content Brook and what it probably would be due to the channel itself being lowered so much as well as having the pipe arch going under Whipple Road the flood plain elevation would be lowered. The work that we did for Dan Kindred was to go back and do a re-study of Content Brook beginning from Whipple Road working back up to Andover Road and beyond. The Green Engineering Flood Plain (GEFP) that you see on the map now is there strictly for informational purposes. The GEFP and FEMA elevation is 98 and right now with the new channel and culvert the FEMA elevation is 93 significantly lower than the flood plain. So with the elevation of 93 this project is no where near one hundred (100) feet of the flood plain. Mr. Berube suggested that I come before the Board for a variance request just to have it on record that the Board is aware that this stretch of Content Brook has a different flood plain elevation. The Conservation Commission looks at the buffer zone and the flood plain. Mr. Williams explained the buffer zone on the plans, which is down hill from any proposed work. This in-law addition is no where near one hundred (100) feet of the flood plain.

Mr. Kenyon asked how do you know the elevation is 93.

Mr. Williams replied that he has done a re-study and a similar analysis to determine the elevation. Mr. Williams explained how the study was done, where he got the data from and the process that was used to calculate the elevation by FEMA. They finally approved and revised the flood plain elevation.

Mr. Berube explained that back in 1999 FEMA issued a Letter of Map Revision (LOMR) recognizing the work that Joel did.

Mrs. O'Rourke asked does the subdivision have a flooding problem.

Mr. Williams replied that he did not think so but Mr. Downer could probably answer that question.

Mr. Downer explained that before he bought the lot it was dug out for town sewerage and it is all sand approximately 30-50 feet down. They also installed drainage easements. We have never had any water and neither have any of our neighbors.

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

Mr. Berube stated that he did not see any problem with granting the variance. Mr. Berube explained that the FEMA flood plain is the governing flood plain here and the Green Engineering Flood Plain is totally inaccurate now and does not represent what is out there.

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

No abutters were present.

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

The Board Members did not have any questions.

Mr. Kenyon made a motion to grant a variance of the Board of Health Rules and Regulations, Chapter 5, Section 5.5.005 (1) in order to construct an addition and appurtenant work within twenty-five (25) feet of the Flood Plain and based on the fact that the FEMA Flood Plain is the governing flood plain and the Green Engineering Flood Plain does not apply 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 Board of Health's Rules and Regulations, Chapter 5, Section 5.5.005 (1).
- 2) The applicant proposes to construct an in-law addition to the existing single family dwelling. The existing dwelling is serviced by town water and sewer.
- 3) The proposed addition will be located within approximately thirty (30) feet of the Green Engineering Flood Plain (GEFP) as identified on GEFP Map #121. However, the Content Brook channel has been significantly lowered through the installation of a pipe arch culvert under Whipple Road. This work has significantly lowered the FEMA Flood Plain as reflected in a Letter of Map Revision (LOMR) effective August 15, 1999. In turn, this work has altered the Green Engineering Flood

Plain whereby the proposed construction will occur well outside the boundaries of the FEMA and GEFP Flood Plains. There will be no filling or work within the Flood Plain.

- 4) The Board of Health recognizes that the FEMA Flood elevation shall be the governing elevation in Flood Plain determinations in this area along Content Brook.
- 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 1, 2, 3, 4, 5, 6, 9, 10, 11, 12, 13, 14, 15, 18 in accordance with the Board of Health regulations and Special Conditions:

- A) All construction must be in accordance with plans submitted for review and approval, prepared by Dresser, Williams & Way, Inc. dated December 21, 2009, and revised January 21, 2010 and stamped by Joel Williams, R.P.E.#29522.

Mrs. Giroux seconded. So voted unanimously

### **8:10 p.m. Amy West – 17 Waterview Avenue – Request Variance for work within the Flood Plain**

Mrs. O'Rourke stated the next hearing is Amy West, 17 Waterview Avenue, requesting a Variance for work within the Flood Plain.

Matt Hamor, Polaris-Hancock Engineering identified himself. Mr. Hamor explained that he is working on this project in conjunction with Robert Gill. Mr. Gill started this project over the summer and now resides in Florida. He has asked our firm to continue with the permitting process. We are here requesting a variance for work within the Green Engineering (GEFP) one hundred (100) year Flood Plain, which is adjacent to the Concord River. Waterview Avenue is located off Pollard Street. This property is owned by the West family. The house has been in their family since 1930. Amy West now owns this house and wants to renovate the existing dwelling and replace it with a new dwelling utilizing the existing foundation. Mr. Hamor pointed to the plans and explained the location of the existing dwelling and the farmer's porch on the front. The property slopes from Waterview Avenue in the front down to the Concord River in the rear with 2 - 5% slope. Mr. Hamor explained the different buffer zones that relate to the Conservation Commission. One is the twenty-five (25) foot vegetated strip along the riverfront. Another is a fifty (50) foot no alteration area. Another is the one hundred (100) foot inner riparian zone. Mr. Hamor explained that the entire property is within the two hundred (200) foot riparian zone to the river and pointed to that area on the plans. Mr. Hamor pointed to the elevation of 116 and explained that is the one hundred (100) year flood plain per FEMA. The Green Engineering Flood Plain is at elevation one hundred twenty-two (122). Additionally, the applicant proposes to

remove an existing set of concrete steps out back of the property. The proposal is to construct two frost walls to square off the foundation. There will not be a foundation there will only be a crawl space. Mr. Hamor explained that there is an above ground storage tank underneath an enclosure that has a cinder block foundation.

Mr. Kenyon asked is that an oil tank.

Mr. Hamor replied yes. Mr. Hamor explained that the plan is to take the volume of what would be removed to what is being filled within the one hundred (100) year flood plain and provide two (2) cubic feet of compensatory storage which would be extra from what is being taken away. To meet the performance standards we are going to request that we just maintain the existing vegetated bank rather than disturb it to gain such a small amount. In the packet is a copy of the certification from a structural engineer certifying that the existing foundation is structurally sound. We have also provided architectural plans to show the new structure. We feel that this project will benefit this property because this property will be brought into conformance with all the flood plain regulatory requirements per the building code. All the electrical components will be above the elevation of 116.

Mr. Kenyon asked would the utilities be located in the attic.

Mr. Hamor explained we are not sure about that. The plans are still preliminary because the architect that was working on this project passed away. Mr. Hamor pointed to an area on the side of the house and explained that a mechanical enclosure may be constructed for the utilities. There might be some space in the upper portion of the basement for the utilities because the basement floor elevation is 113. The top of the foundation is at 118, so we do have a little room for the utilities. We are relying on an architect to come up with an innovative way to make sure that the electrical components are flood proofed.

Mr. Kenyon asked is the oil tank going to be used for heating.

Mr. Hamor explained the plan is to bring the gas line up the street for heat. The oil tank will be removed and disposed of.

Mr. Berube asked was any thought given to putting in a new foundation.

Mr. Hamor replied there was. The poured foundation does not show any signs of cracks and they were trying to save the expense of a new foundation. The structural engineer told us the existing foundation is sound. We do not know what would happen if we took out the existing foundation.

Mr. Berube stated that with a new foundation you could raise the floor so that there could be usable space. Mr. Berube explained that he visited the site and I noticed there is a sump pump in the basement. I am sure they experience flooding in the basement. That is an issue the owner will always have to contend with if they use the same foundation.



Mr. Hamor replied that is correct.

Mr. Kenyon commented that area really floods and there is a 2-5% slope to the river.

Mr. Kane stated that the GEFP is one hundred twenty-two (122) feet that is almost four (4) feet above the top of the foundation.

Mr. Hamor replied yes.

Mr. Berube explained that usually near the Concord River we roll it back about three (3) feet so the adjusted GEFP would be at elevation 119. It is still three (3) feet higher than the FEMA elevation.

Mr. Kane stated it is still above the top of the foundation at elevation 119.

Mrs. O'Rourke asked how old is this house. Has any renovation work been done? From the pictures it looks like work has been done to the roof.

Mrs. Giroux stated it is an older house.

Mr. Kenyon replied the camera did this house justice. I have seen that area when it floods and the water comes right up on the road.

Mr. Hamor replied there is no doubt that the house floods and that is why they don't think the basement is an area that they want to consider quality space. That is why they had the structural engineer come in and make sure the foundation is sound. It is a poured foundation

Mr. Kenyon stated the house was built in 1930 and it is grandfathered in. The houses in that area are only five (5) feet away from each other. Nothing can be done because it is grandfathered in.

Mr. Hamor stated that when they take the house off they may add another row of cinder blocks to the top of the foundation. I am also requesting that the Board give consideration to not requiring any excavation work because it is such a small lot.

Mr. Kenyon asked what is stored in the shed.

Mr. Hamor replied the plan is to replace the existing shed with a new one. We are also removing the existing concrete driveway and replacing it with a bituminous driveway.

Mr. Kenyon explained that the Board requires that items stored in the shed, such as a lawnmower, gas cans, paint cans be stored off the floor above the flood plain.

Mr. Hamor asked is that something that is required on the building permit or something that is required by the Board of Health variance request.

Mr. Berube replied the Board would make that a condition.

Mr. Hamor replied that would not be a problem. The shed would be used to store a lawnmower and gas cans.

Mrs. O'Rourke asked if any abutters were present for 17 Waterview Avenue.

No abutters were present.

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

The Board Members did not have any questions.

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

Mr. Berube stated that last year we granted a similar request for 56 Riveredge Road. They are just squaring off the foundation. The loss of flood storage is so insignificant that I would forego the flood plain compensation and maintain the integrity of the land instead of disturbing it and possibly eroding away material into the river. I would also recommend a condition that all the utilities are above the flood plain elevation.

Mrs. Giroux made a motion to grant a variance of Board of Health Rules and Regulations, Chapter 5, Section 5.5.005 (1) to raze the existing single family dwelling and construct a new single family dwelling at 17 Waterview Avenue in the Flood Plain based on the following findings of fact and pursuant to the following conditions:

#### **FINDINGS OF FACT**

- 1) The work described in the applicant's request is within an area subject to protection under the Billerica Health's Rules and Regulations, Chapter 5, Section 5.5.005 (1).
- 2) The applicant proposes to raze an existing single family dwelling located in the Flood Plain in order to construct a new single family dwelling. The new construction shall utilize the existing foundation. In addition, the applicant will be replacing the storage shed. All utilities in the proposed dwelling will be located within the attic space. The proposed dwelling will be serviced by town sewer and water.
- 3) There will be a slight increase in the foundation area that will have a negligible impact upon the Flood Plain. A small amount of grading is proposed to provide compensatory flood storage. However, the Board recognizes the benefit of maintaining the integrity of the riverbank area rather than disturbing the area to gain a minimal amount of flood storage.

- 4) The Board of Health has determined that the actions proposed by the applicant are adequate measures to protect the public health and environment and complies with the intent of Board of Health Rules and Regulations. Further, approval of the applicant's request will not be detrimental to the public health and environment.

**CONDITIONS**

Standard conditions number 1, 2, 3, 4, 5, 6, 9, 10, 11, 12, 13, 14, 15, 18 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 Robert M. Gill, Engineering & Surveying dated December 11, 2009, revised to February 4, 2010 and stamped by Robert M. Gill RPE#24181, RLS#29867.
- B) The oil tank must be properly drained and removed from the dwelling. The work must be permitted and inspected by the Billerica Fire Prevention Bureau. Documentation shall be provided to the Board of Health office for proof of compliance.
- C) All utilities in the proposed dwelling shall be located above the flood elevation of 119.
- D) Chemical and petroleum products stored in the shed shall be securely placed on shelves above the flood elevation of 119.

Mr. Kane seconded. So voted unanimously.

**8:20 p.m. McFarland Cascade – Iron Horse Park – Air Sampling Report**

Mrs. O'Rourke stated the next hearing is McFarland Cascade, Iron Horse Park.

Chris Davis, Goodwin Proctor LLP, representing McFarland Cascade identified himself. Mr. Davis introduced Gale Hoffnagle from TRC Environmental Corporation. Mr. Davis explained that Steve Glennon was supposed to be present however he is sick. Mr. Davis explained that we are here in response to the Board's modified Order issued in November 2009 regarding the air monitoring of pentachlorophenol (PCP). The performance of the initial round conducted on November 30 and December 1, 2009 on-site air sampling within the pole yard found the reported PCP concentrations above the MassDEP's Ambient Air Levels (AAL) 0.01 ug/m<sup>3</sup>. That is why we conducted the off-site air sampling in January 2010 at the Rod and Gun Club, and 2 Bayberry Lane as well as another site at the pole yard. The second testing indicated that no pentachlorophenol was detected at the two off-site residential locations and the concentration in the pole yard next to the poles was substantially lower than in December. Mr. Hoffnagle is present to discuss in detail any questions that the Board may have. Further, in conformance with the Order another round of on-site and off-site air monitoring for pentachlorophenol will be conducted in the spring of 2010. At this time we are not sure of the locations for that sampling.

Mr. Berube stated that he has provided the Board with a copy of the progress report and the Response Action Plan from the site examination that McFarland Cascade has sent. As you can see from round one the air sampling that was done on December 1, 2009, the testing showed it did exceed the air levels that DEP has set. We proceeded into the residential neighborhood and the weather was much colder and that probably had an impact on the results of the second testing. We should continue the process and go forward with the air sampling in May 2010. I think that would be indicative of what the residents are experiencing out there.

Mr. Kane stated that he had a question for Mr. Hoffnagle. Mr. Kane stated that in April 2009 you told us that PCP cannot evaporate at 100 degrees but it can evaporate at 300 degrees. PCP is not coming out, it is not being smelled, the odor is not there at 100 degrees. The first round of air sampling on December 1<sup>st</sup> the temperature was 55 degrees that is below 300 and when you did the second round of testing on the 12<sup>th</sup> of January it was 20 degrees and we are still above the reportable limit. In April it could not happen but in December it does happen. Here we have two samples that says it does happen.

Mr. Hoffnagle replied that is at the pole yard.

Mr. Kane stated it is the evaporation into the air. Mr. Kane asked Mr. Hoiffnagle to explain how that could happen.

Mr. Hoffnagle explained that Figure 3 on the chart shows the vapor pressure of PCP is a functional testing. Of the temperatures from 0 to 1 there is solvent evaporation at lower temperatures.

Mr. Kane stated so when you gave us the information at the Board of Health meeting on April 13, 2009 the information was incorrect.

Mr. Hoffnagle replied the evaporation at ambient temperatures is very low. You can see the evaporation rates are very low. One to the minus 6 millimeters of mercury is a very low average.

Mr. Kane stated it is still above the detectable limit. It is certainly below the 100 and 300 degrees that you testified to April 13, 2009.

Mr. Hoffnagle stated if you are next to the poles it is above the detectable limits.

Mr. Kane stated that his concern is that you are here as our air quality expert, a certified professional and you are being paid by McFarland Cascade and I understand that relationship however, my concern is that you would stand before a governmental regulatory authority even if it is just the Town of Billerica and say that very clearly from my memory as well as the minutes that PCP cannot be come airborne and it cannot evaporate. It can evaporate at 300 degrees but not at 100 degrees. We now have two airborne samples one at 20 degrees and one at 50 degrees that says it does happen. My concern is your creditability before this Board. You were adamant and stated that this cannot happen and that our residents were making this up.

Mr. Hoffnagle stated that he did not say that.

Mr. Kane repeated you stated this cannot happen.

Mr. Hoffnagle stated I don't remember saying it that way. I remember saying that pentachlorophenol is very un-evaporative and that I did not expect it to show up in residential homes.

Mr. Kenyon stated that he has been looking at the McFarland Cascade webpage and they continually get kudos for their environmental awards. Is the corporate office aware of what is going on here? Here we have a whole neighborhood being held hostage by McFarland Cascade. I don't understand that.

Mr. Davis stated I don't agree that the residents are being held hostage. McFarland Cascade is trying to operate a lawful business. Utility poles are a public necessity and they need to be stored somewhere. They are trying to be responsible to the Board. They changed the formulation. They have cut back on the amount of inventory short of shutting down the operation. They have taken steps to minimize the impact of the old poles. McFarland has also taken steps to remove the poles with the old formulation off site. The odor that comes from the poles is the diesel that is used as the carrier that the poles are treated with. They are very aware of what is going on in Billerica. There are numerous conference calls going on. Steve Glennon reports back to his superiors on a regular basis. The corporate office is paying a lot of attention to what is going on in Billerica. They are trying to be good neighbors. Billerica has their full attention.

Mr. Kenyon stated that he read on the McFarland Cascade webpage that they have fourteen (14) distribution sites across the country in many different states. Ten (10) of those fourteen (14) states have only one distribution site. Two (2) of them have only two (2) sites. Massachusetts and New York have three (3) distribution sites. In Massachusetts there is one in Billerica, one in Raynham and one in Westfield. Why is there a need to have more than one (1) distribution site in Massachusetts when states far larger than Massachusetts have only one? I don't understand that. Raynham is only thirty (30) miles away. Why can't the inventory be moved to Raynham now that the inventory has been reduced and there are ways of protecting the poles.

Mr. Davis stated that moving the poles to another community is not a guarantee that there wouldn't be an issue there.

Mr. Kenyon asked is there an issue in Raynham?

Mr. Davis replied not that he is aware of. It is perplexing to me and to the company that this issue has arisen in Billerica because this operation has the same kind of poles treated with the same chemicals from the same supplier that has been in this location for over twenty (20) years. McFarland Cascade acquired the business from For-Tek..

Mrs. Giroux stated that she was also looking at the webpage. When was the last time McFarland Cascade received an environmental award.

Mr. Davis stated that he did not know.

Mrs. Giroux replied it was after this problem started. My concern is how could they receive an environmental award while this problem is going on? You disagreed with the neighborhood being held hostage. Technically they are because they can't go out in their yards and they can't open their windows. I don't think the odor is coming from the diesel of the trucks coming in. I think this is a definite problem. I would strongly suggest that they move the poles to Raynham. I can't see that moving the poles thirty (30) miles away would make a big difference. There doesn't seem to be a problem there. There must be something different between this facility and the Raynham facility. You have reduced the inventory down to twelve hundred (1200) poles. Would shifting the inventory thirty (30) miles away make a difference in production?

Mr. Davis stated that he could ask McFarland Cascade.

Mrs. Giroux stated that she would like Mr. Davis to find out. If Raynham is only thirty (30) miles away and they are not having a problem what is the difference? There is definitely a problem if the results of the test that was performed in early December still came out higher than normal. There is an issue.

Mr. Davis replied I suspect if you took the same poles to Raynham, monitored them, had the same conditions and had them tested you would probably get the same results.

Mrs. Giroux stated there is definitely an issue. I would recommend that the inventory be reduced or move the poles.

Mr. Kenyon stated we have gone through the ground sampling, we are going through the air sampling and the next thing we need to look at is the nuisance factor. There is definitely a public nuisance factor in this neighborhood. That is something that will be next on the agenda. We still have a public nuisance factor. Public nuisance is under the Board of Health by-laws and regulations.

Mr. Davis replied we understand that. The odor issue is what got this started and we have been trying to manage it.

Mr. Reader asked do some states forbid these poles being stored in their state.

Mr. Davis replied not to his knowledge.

Mr. Reader asked is there another chemical that the poles could be treated with that isn't hazardous.

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Mr. Davis replied to treat these poles you need to have something that is toxic and would not break down the wood. There are a limited number of chemicals that are registered to treat poles. Pentachlorophenol is the one that is preferred by the customers because of its specifications.

Mr. Kane stated at this point our neighborhood samples have come back as below reportable limits. I have concerns regarding exposure to the employees working in and around the pole yard with air that has PCP above reportable limits. Is this an occupational exposure that is putting the employees at risk for chronic exposure within the work environment and should any action be taken? Mr. Kane asked Mr. Berube if he had any comment as our Director of Public Health.

Mr. Berube stated it could be an OSHA issue. Anybody that is working in Iron Horse Park could be subject to exposure levels, which could be significant. The exposure levels should be looked at when we do the sampling in May.

Mr. Kane stated that is one of his concerns.

Mr. Davis explained that the employees of McFarland Cascade do not spend a lot of time right next to the poles. The office is several hundred yards away. Steve Glennon and his staff work in the office except when the poles are being loaded or unloaded. On the report the Massachusetts .01 level is dramatically lower and I don't know how the Department of Environmental Protection (DEP) came up with that number. Other states use the Environmental Protection Agency (EPA) limits. They have screening levels that are higher than what are deemed acceptable. Because the level exceeds the DEP number I don't think you should assume that the employee's health is at risk. Mr. Davis explained if you are next to a pump at a gas station or next to a diesel bus or truck the exhaust levels may be very high.

Mr. Kane stated like a full time employee at the pole yard being next to the poles or working in that area.

Mr. Davis explained the employees do not spend the entire day in the yard.

Mr. Kane replied but our sample size came from the pole yard. One sample was taken from right next to the poles and the other sample was taken at the fence line as far away as possible in the yard and both samples were above the reportable limits. I know you don't like that Massachusetts has the strictest reportable limits but it is what it is. It is the reportable limit by DEP here in Massachusetts. It may be the most stringent but it is still the standard in Massachusetts.

Mr. Hoffnagle stated that the OSHA limits and OSHA requirements would be more seriously strained at the location where the poles are treated and stored rather than in the pole yard.

Mrs. Giroux stated we are not concerned about those locations we are only concerned about the Billerica location.

Mr. Hoffnagle replied that he understands that but the OSHA issue at the treatment plant is going to be substantially more strained and checked.

Mr. Kane stated they must have protective equipment at those locations because of the hazardous chemicals that are being used. Do you know if the employees on site work in the area?

Mr. Hoffnagle replied that he does not know. I am only suggesting that if you are looking at the OSHA standards you should look at the treatment plant for answers to your OSHA questions as a starting point.

Mrs. Giroux stated we are using the standards that Massachusetts has for the facility in Billerica Massachusetts not the origins.

Mr. Hoffnagle stated that he understands. He does not remember anyone having done an OSHA analysis of exposure at a pole yard but there are plenty of analyses of exposure at the treatment plants. That is where you will find the data. The treatment plants are where the studies have been done.

Mr. Reader asked have you researched relocating the pole yard.

Mr. Hoffnagle replied not at this time.

Mr. Davis replied McFarland Cascade is concerned that if they move to another facility the problem could be the same.

Mr. Reader stated that it appears that Raynham does not have this problem. This is a nuisance and probably a health hazard. I think this is something they should be looking at.

Mr. Davis explained they would need to find a location that is suitable, on a rail line and the rent is reasonable and would not be too close to anybody. That might be hard to find in this densely populated area.

Mrs. Giroux stated but Raynham is only thirty (30) miles away.

Mr. Berube asked is there a rail line near the Raynham facility.

Mr. Davis replied I believe there is.

Mr. Berube asked could you find out if there is a rail line in that location.

Mr. Davis stated that is irrelevant to what we are dealing with here.

Mr. Kenyon stated you have provided the Board with some of the answers about the environmental aspect, but you need to get directly back to the management at McFarland Cascade and



let them know that something needs to be done. The poles keep coming in. The contamination in the area continues. We have been meeting for two (2) years. Right now the weather is cold but when the weather is warmer we will start this all over again. I don't think McFarland Cascade feels any heat from this issue. Maybe someone from McFarland Cascade's upper management should come to one of the meetings and hear what is going on. This has to come to a closure.

Mr. Davis stated that Steve Glennon works for the company.

Mr. Kenyon replied that Steve works at the site and every month we meet and go over the same thing.

Mr. Berube asked does Steve Glennon manage the other two locations. Does he visit them at all?

Mr. Davis replied I think he just manages the Billerica site.

Mr. Berube stated that he thinks the Board should push the alternative site in Raynham. The site in Raynham is the site of the old dog track. That site consists of hundreds of acres. I am sure if the poles are stored there they are going to be farther away from any residential neighborhoods.

Mr. Davis stated Iron Horse Park is several hundred acres too.

Mrs. O'Rourke asked if anyone in the audience would like to speak, please come forward and clearly state you name and address.

Melissa Smith, 19 Carriage Road, identified herself. Ms. Smith explained that in the November, 2009 minutes Mr. Hoffnagle stated that ***we are not going to find pentachlorophenol in the air now, the vapor pressure is directly related to the evaporation rate from 77 degrees down to 40 degrees. The evaporation rate goes down by a factor of 10. We will not see any pentachlorophenol at 40 degrees.*** Then later on Mr. Hoffnagle goes on to say that ***the weather will be colder and we are beyond the time when it is best to do the sampling I urge you to delay the sampling until the temperatures are back up to 70 degrees.*** I agree with Mr. Kane how can we believe any thing that Mr. Hoffnagle is saying when he states that we are not going to find anything and the results are above the DEP limits. It is not just about the smell. The new formula created the smell and brought it to our attention and that is how we knew that there was PCP in the poles. Even if they change the formula PCP is still in the poles and still in the air whether the smell is there or not.

Lynne Santos, 29 Seven Oaks Road, identified herself. Ms. Santos stated that she had a couple of points she wanted to talk about. Ms. Santos explained that Mr. Berube had provided a copy of the air sampling that was done in Canada and it showed the air sampling year round. I think summer values were much higher like a thousand times higher. The concentrations are much higher in the summer. Secondly, I think that now you have evidence of air pollution because they are not allowed to exceed the DEP levels beyond their fence line. They are not allowed to exceed the DEP limits anywhere off their property that would be considered air pollution. I think that will give the Board some legal power.

Mark Sampson, 4 Carmel Drive identified himself. Mr. Sampson stated that he was not successful in finding the locations of the distribution sites that Fred and Sandra mentioned. I would be very interested in finding out if the distribution centers are near superfund sites or contaminated sites.

Mr. Kenyon asked Mr. Davis if he could provide the Board with the addresses of the fourteen (14) distribution sites.

Mr. Sampson stated I think that Mr. Berube has already addressed this but the rate of distance must be greater than what we have in Billerica that is why they are not getting any complaints in Raynham. I mentioned the safety of the employees at a meeting earlier in 2009 and I was told there wasn't any need for respirators or things like that because there are no issues. I find it interesting that Mr. Glennon the employee who works with the poles is absent tonight.

Mr. Kenyon stated that Mr. Glennon is in the office on the other side of the tracks. The company that distributes the poles is in another area. Is that company aware of the issues?

Mr. Davis explained that the lumberyard is a separate business. The owner of the lumberyard owns the property and leases it to McFarland Cascade. They have nothing to do with the poles or the distribution of the poles.

Mr. Kenyon stated so McFarland Cascade employees move the poles.

Mr. Sampson stated that he had one last question. If we have a cool May like we did in 2009, the temperatures did not reach above 50-60 degrees can we wait until early June when the temperature is at least 70-80 degrees before the testing is done.

Mr. Hoffnagle explained that he and Mr. Berube will make sure that they pick the right time. That is why we said some time in the spring when the time is right.

Richard Karamanian, 4 Ashdale Road identified himself. Mr. Karamanian stated that he was not able to make the last meeting. Mr. Karamanian explained that there were references made regarding the telephone poles that the smell was like organic mulch. That is not what it smells like. We were told the odors were diesel carriers. That is not a form of diesel fuel by itself. Diesel fuel evaporates. I know because I have worked in the transportation industry for over thirty (30) years. The smell is not good for the environment. We were also told that the molecules were heavy and sit low around the poles. We were also told we were not going to find any hits regarding any odors detected. I have no faith. I have no trust. I went to McFarland's website and looked at the contributions that they have made. This has gone on long enough. Initially we were told it is not in the air. My concern at this point is that the ground water should also be tested. We already know it is in the soil. We know it is in the air. There were 3,000 utility poles at the site and even with the reduction the smell is still there. I have not smelled it. Even though we do not smell the odor it is still in the air. The situation is not going to change. I have an obligation to my family. We have to start thinking of the legal representation. We have to start thinking about the moral and ethical obligations to one another.

Mr. Kenyon stated at a few of the meetings that Carole Legro attended she told the Board that she was being evaluated for certain conditions. Could someone find out what those conditions are? We need to investigate further and it would be helpful if we knew what she was being evaluated for. The symptoms from breathing in PCP are the same symptoms that you could have when you are exposed to lead and arsenic. Even if there was no PCP in the area, Iron Horse Park has 60 times the level of lead that is also in the air. If we know what she is being evaluated for we could correlate those with the other contaminants that we know are in Iron Horse Park and have been there for fifty (50) years. If possible we would like to know what Carole is being evaluated for.

Mr. Sampson replied that he would check with Carole.

Janet Palermo 3 Ashdale Road, identified herself. Mrs. Palermo stated that she could tell the Board what some of the symptoms are. Very bad headaches, upset stomach, you feel like you are walking on air. Those are some of the symptoms. A couple of weeks ago the smell was horrendous. I agree with the Board the poles should be moved and you will not hear from us.

Mr. Berube explained for the Board's information the Health Department received one complaint from a resident in the Whitegate area. They did smell the odor. I checked with Mark Sampson and he agreed that he could detect the odor on that particular evening. Even during the winter you can still smell the odors.

Kathy Karamanian 4 Ashdale Road, identified herself. Mrs. Karamanian explained that her son goes to night school and when he is driving home on Mondays and Wednesdays, he drives by the Rod and Gun Club and he can smell the odor. Because people do not complain it does not mean that they do not smell the odor. There are a lot of different illnesses in the area. People sometimes do not complain but it is in the air. If more people had complained about this odor it would have been taken care of a long time ago.

Mr. Kenyon asked if she had any symptoms.

Ms. Karamanian replied that her family complains of bad headaches.

Derek Karamanian 4 Ashdale Road, identified himself. Mr. Karamanian explained that he has smelled the odor when driving home from school on Wednesday nights. They must receive a shipment on Wednesdays because the smell is stronger then. Pentachlorophenol has a tendency to go from the air and is absorbed into cloth. If you are sleeping with the windows open on a hot summer night the smell comes in through the windows and is absorbed into the blanket. During the winter I still smell it when I come home. It goes right through the carbon filter in your car and into your heating system. When the heater is on you can breathe in Pentachlorophenol from your car.

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

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Mr. Berube explained the results of the sampling so far are quite compelling. We still need to see the air sampling conducted this spring to conclusively say what is going on out there. It could be something more than just PCP. We need to explore if there are other things besides PCP that could be affecting the health of the residents in the area. I would recommend to the Board that we ask McFarland Cascade to submit an air-sampling plan by the next meeting to see if the plan meets the intent of the order that was issued by the Board in November 2009. Also the Board would like an alternative analysis for relocating the poles as well. Mr. Berube stated that needs to be explored further because that could possibly be an action the Board may want McFarland Cascade to take down the road depending what happens in the spring.

Mr. Sampson asked could the Board formally request the addresses of the fourteen (14) distribution locations and could the Board request that a three-minute update be given tonight on what is being done with the soil.

Mr. Berube replied that a copy of the Response Action Plan for the soil was included in the Board's package.

Mr. Davis explained that GZA submitted a proposed work plan for the soil and it will include three (3) groundwater monitoring wells to sample the soils for a range of contaminants and other certain metals of concern. A risk assessment and an alternative analysis will be done to see how we will proceed with the Mass Contingency Plan (MCP) for remediation and site closure. The plan is to begin once the soil has dried out and it warms up in the spring. The goal is to have the process completed or substantially completed in October 2010 which is within a year of the notification from DEP. McFarland has retained Dr. Larry Feldman as its Licensed Site Professional to oversee the response actions to be conducted by GZA on behalf of McFarland Cascade at the Site.

Mr. Berube stated that in the plan it is noted that McFarland will provide monthly progress reports to the Board of Health during the performance of the work and will provide the Board of Health a copy of all reports. Mr. Berube asked if the Board had any questions.

Mr. Kane asked did you contact DEP as well as the EPA and inform them of the air pollution reportable limits being above the standards. Is DEP aware of this release in chemicals?

Mr. Berube replied that he has contacted DEP and EPA and notified them of the findings. They are aware of what is going on. DEP is looking forward to the air sampling that will be done in the spring. At that time we will have discussions as to where do we go from here.

Mr. Kane asked can you also inform DEP and EPA about the employee safety and the occupational exposure. Can you find out who is Massachusetts equivalent of OSHA that would be responsible for employee hazards?

Mr. Berube replied that he would have that conversation with the Department of Public Health and DEP as well and find out who is responsible. They will probably have some interest because it is

an air quality issue.

Mr. Kane asked when you find can you let the Board know.

Mrs. O'Rourke asked after they do the air monitoring in the spring and we receive a report will that be the final report we will be receiving. How many more times will they have to come back before this Board before this Board makes a decision?

Mr. Berube replied that after the air sampling is completed in the spring I think we will have a clear picture of what is going on. At that point we can determine what actions need to be taken to bring this to an end.

Mr. Kenyon asked Mr. Berube if he has had any input from Town Counsel because they have sat in on some of the meetings.

Mr. Berube replied that Town Counsel has been following the case and I have been forwarding them all the reports and correspondence.

Ms. Santos stated I know that everyone is interested to know to what extent the pollution problem is and what they have been exposed to. Why is there a need for more testing? It will be above the limits.

Mr. Kane replied the point is not about the results in the neighborhood but that a release of chemicals above the reportable limits has been identified. It is on the property on this side of the fence and that concern is valid. Chemicals are being released into the environment and we have independent laboratory confirmation. The release of chemicals is a public health concern.

Mr. Hoffnagle stated that I agree the concentration that was measured at the fence line was slightly above the AAL level in December. We did not find any pentachlorophenol at the residential locations that were selected. The concentrations from the center of the pole yard to the fence line decreased by a factor of 10 in the December test. So it went down by a factor of 10 from the center of the pole yard next to the poles at the edge of the northeast area of the pole yard.

Mrs. Giroux stated this is the chemical that you said we would not find.

Mr. Hoffnagle replied we did not find it off-site and in the neighborhood.

Mr. Kane stated it was not found off-site at the neighborhood but it was found 3 feet over the property line.

Ms. Santos stated off-site is anywhere beyond the fence line. Next time the testing should be done beyond the fence line. If there are levels of AAL at the fence line then you should test 1 foot beyond the fence line.

Mr. Davis stated the AAL is an advisory guideline not a promulgated regulatory standard that is unlawful to exceed. It is a screening level, a level of potential concern. I don't agree that if you find PCP a foot over the property line that it is a violation or an unlawful condition of air pollution. There is a level that you don't have to report to the State.

Mr. Kane asked is there a screening level versus a reportable level versus an actionable level.

Mr. Davis replied for pentachlorophenol we found that in Massachusetts that .01 is an allowable air level (AAL).

Mr. Kane asked is allowable much different than ambient.

Ms. Santos stated that she will send the definition in the Massachusetts Regulations of what they consider to be air pollution. There is some leeway it is not just the federal standards it is any reasonable scientifically shown condition of air pollution. Levels above the allowable ambient levels would be considered air pollution.

Mr. Davis stated it is not legal or binding by the federal standard it is a guideline. It is a DEP guideline.

Mr. Sampson stated the law states if pollution causes a nuisance it is a problem.

Mr. Reader asked what legal rights does the Board have.

Mr. Kane stated according to the Board of Health Regulations any discharge of any chemical waste is a public health nuisance. We have objective data that states that it is above the allowable ambient level. *Mr. Hoffnagle stated if it is in the air it is ours.* At this point we have proof that it is in the air. We could ask our attorney but we have evidence, we have a violation of our regulations and some objective standard. I am seeing this as the poles are creating a public nuisance.

Mr. Berube stated that he would recommend that McFarland still go forward with the air sampling plan so that it meets the intent of our November order. Also provide the Board with an alternative analysis plan for relocating the poles and submit it prior to the next meeting. Before the next meeting I will have a discussion with DEP and Town Counsel and then the Board can discuss if they want to go down this path. Then we may have to go into Executive Session to discuss our legal options. I think the Board should hear from Town Counsel. If this is what the Board decides to do McFarland Cascade may take the Town to court.

Mrs. Giroux made a motion to pend the decision tonight to allow Richard Berube, the Director of Public Health sufficient time seek the advice of Town Counsel and DEP. At this time the Board is requesting that McFarland Cascade provide an alternative plan to relocate the poles to a more suitable site and provide the Board with the addresses of the fourteen (14) distribution centers and reconvene at the next meeting.

Mr. Reader seconded.

Mr. Kane asked if he could modify the motion to cease any further deliveries of the poles into the pole yard until the next meeting.

Mr. Davis stated that he objects to that order. I don't think the Board has the authority to do that. McFarland Cascade has been complying with the Boards order and nothing has been detected in the residential neighborhood.

Mr. Kenyon stated we need to discuss this with Town Counsel.

Mr. Kane asked based on what grounds do you say we don' have the authority to cease any further deliveries. It sure sounds like a public health nuisance to me.

Mr. Davis replied that the pentachlorophenol was not detected off-site. It was only detected on site and I don't know how that constitutes a public health nuisance.

Mrs. Giroux asked could we wait until the next meeting and seek advice from Town Counsel. Mrs. Giroux stated that she stands with her original motion.

Mr. Kenyon seconded. So voted unanimously.

**8:30 p.m. Stephen Dresser – Swanson Woods, Rangeway Road – Request for Release of Bonds**

Mrs. O'Rourke stated the last hearing is Stephen Dresser, Swanson Woods, Rangeway Road, requesting the release of bonds.

Attorney Stephen Lentine, 409 Boston Road, Billerica identified himself. Attorney Lentine explained that he was representing Stephen Dresser. We are here to request the release of the bonds to Stephen Dresser from the Swanson Woods Project on Rangeway Road. As I mentioned in my letter dated January 28, 2010 to the Board the project is going through a friendly foreclosure proceeding. Steve agreed to give the project back to Stoneham Bank and not protest foreclosure rights. We did request that the bonds be released to Steve however the bank thinks the bonds belong to them. I told the bank that the bonds belong to Steve because they are in his name personally and not in the name of the entity that gave the mortgage to the bank. The variance that was granted by the Board on November 7, 2005 has expired. Whoever purchases the property at the foreclosure sale will be required to post their own bond to complete the project. Steve could use the money. I hope the Board will grant Steve some consideration and release the bonds to him at this point in time.

Mr. Kenyon asked how much is the bond worth.

Attorney Lentine replied approximately twenty thousand (20,000) dollars.

Mr. Berube explained there are two bonds. One bond is for the septic system for twelve thousand (12,000) dollars and one is for the project which is fifteen thousand (15,000) dollars.

Mrs. O'Rourke asked where is the project located.

Mr. Berube replied Swanson Woods is located on Rangeway Road across the street from Swanson Meadows.

Attorney Lentine explained when the project is completed it will be a ten unit condominium complex.

Mr. Dresser stated that one of the units is built and the other one is being framed. They were already started when the foreclosure process started.

Attorney Lentine stated the bank is aware of this and their intent is to complete the project.

Mrs. O'Rourke asked why does the bank think they bond is theirs.

Attorney Lentine explained that they feel that they have a security interest in the project. The security interest they have is with Jasmine Realty Trust but the bond is in Steve's name. These variances were granted to Swanson Woods. At that time Bob Griffin and Steve had an interest in the LLC, so the variance was granted to Swanson Woods. Steve eventually bought out Bob's title to the property and shifted it from Swanson Woods LLC to Jasmine Realty Trust. The bond was posted in Steve's name personally.

Mrs. O'Rourke asked isn't Steve Jasmine Realty Trust.

Attorney Lentine explained that Steve is the Trustee for Jasmine Realty Trust, which is the entity that gave the security to the bank. The bank did release Steve from his personal guarantee. In the Board of Health Regulations, Section 5.3.0145 it states that "***Bonds held by the Board of Health shall be released to the owner of record (person named on the bond) only.***" Your regulations are pretty specific that it should be released to the named owner on the bond and the named owner on the bond is Stephen Dresser. The counselor for the bank knows I am representing Steve here tonight and that I am requesting the release of the bond. I tried to negotiate with the bank but we could not come to closure. I informed the bank that I was going to be present at the Board of Health Meeting and request the release of the bond to Steve. The bank chose not to attend. I don't think the Board can release the bonds to the bank because of the strict language in the regulations that state that the bond can only be released to the owner of the bond. The only person that the bond can be released to is Stephen Dresser.

Mr. Berube stated the bonds are in Stephen Dresser's name. I did receive a letter from the attorney for Stoneham Bank and I contacted them. I indicated to bank that I would not release the bonds to them even though they stated that they have a security interest. If the bonds are going to be released they will be released to Steve Dresser. I do sympathize with Steve's situation but we do have an



obligation. I don't think we should release the bonds where there is so much uncertainty surrounding the future of this project. The Board might have to step in and use the bonds to make sure of compliance with the Board of Health's Order of Conditions and Regulations. I think at this time it might be premature to release the bonds.

Mr. Kenyon asked is Town Counsel aware of this situation.

Mr. Berube replied that he has not had time to speak to Town Counsel about this issue. I had a discussion with the Town Manager, John Curran and he agrees with my position.

Mr. Kane asked is this project officially foreclosed and no longer belongs to Steve.

Attorney Lentine replied it is in foreclosure right now. Steve signed the paperwork indicating that he would not protest the foreclosure. The foreclosure process has just begun.

Mr. Kane stated so Jasmine Realty Trust is still the owner of this property.

Attorney Lentine explained if you went to the records at the Registry of Deeds you would find that this property is still owned by Jasmine Realty Trust. The first legal notice was published in the Billerica Minuteman last week to commence the foreclosure process.

Mr. Kane stated that it is still Steve's property and the trust is still responsible for the property. It seems to me that this bond needs to remain in place until Steve is no longer the legal owner. Then the Board can resolve whether the bond should be released to the bank or to Steve. Steve is still the legal owner of the bonded property and the bond should still be intact and remain with the Board until it is resolved.

Mr. Berube explained that money is still owed to our consultant as well.

Mrs. O'Rourke asked if the Board Member have any questions.

The Board Members did not have any questions.

Stephen Dresser, identified himself. Mr. Dresser explained that he is not going to be the one to come before the Board of Health for a Certificate of Compliance or an Occupancy permit or the one to ask permission to use the septic system when the project is occupied. The person who is asking permission to use the septic system should be the person responsible for the bond. This is not a case that if something goes wrong the money will be there to fix the septic system. If you need money to fix the septic system you should be getting it from the person who is selling the septic system who is warranting it or from the person who buys the property with the septic system that is in working order. I am no longer that person. The variance has expired. I am not responsible for that septic system. I am not selling the property to anyone who is going to be using that septic system where that bond would need to be in place to protect that person. I don't see why my money should be held up for something that I am

not going to use. If I didn't need the money I would not be going through a foreclose process. It just seems wrong that my money is being held for somebody else's project.

Mr. Reader asked do you agree that some of the money should be paid to the consulting engineers for their work.

Mr. Dresser stated when this process started I asked Mr. Berube to pay Cuoco & Cormier for their work. I didn't realize that they have not been paid. I told him that regardless whether I got any of the bond money please pay the consulting engineers.

Attorney Lentine replied that Mr. Berube could pay them now he does not have to wait for anyone's permission.

Mr. Berube stated that we did not have a January meeting and I did not feel comfortable making that decision. I felt that this should come before the Board because of the situation with Swanson Woods. The future of the project is uncertain. We don't know who is going be responsible. I have not received an answer from Stoneham Bank. I feel that we should hold onto the bonds until we have a clearer picture of what is going to happen down the road. The bonds are all we have to ensure there is compliance with our regulations.

Mr. Kenyon asked won't a new owner have to post a bond before they could do anything with the property.

Mr. Berube replied certainly, but I do not know if somebody is going to step up.

Mr. Dresser stated if no one steps up then no one will be using the septic system. If it is not being used it is not going to fail unless somebody purchases the project and posts a bond.

Attorney Lentine stated that when they would come for an occupancy permit the Board of Health would be within your rights at that point in time to say that the variances have expired and you need to come in and apply for a variance. At that point in time you can require the new owner of the project to post his own bond in placement of the Steve's bond.

Mr. Berube stated that if you can come back with something in writing from Stoneham Bank that would excuse the Board of Health of any responsibility, then the Board would be willing to release the money back to Steve Dresser. I do not think the Board would have a problem with that.

Mr. Dresser stated that he does not understand why anything should be in the banks hands. If they want to use the septic system they have to post a bond.

Mr. Reader asked if the septic system is being used now.

Mr. Dresser replied no.

Attorney Lentine replied the units are empty.

Mr. Dresser stated you can wait for the bank to step up but I have Charlie Todd ready to finish the septic system and is owed \$50,000 and I don't know if he is going to get paid. We are protecting the interest of a bank that has four hundred thirteen million (413,000,000) million dollars. I can't pay my mortgage. We are going to protect the bank. I don't understand what the Board of Health is protecting. If someone is going to use the septic system, you will get the bond money. I don't understand the logic behind why you need to hold this bond it is never going to be used without the septic system being used.

Mr. Reader asked Steve Dresser that as of today are you still the owner.

Attorney Lentine replied the foreclosure process has just begun. We have signed the paperwork with the bank and we are not going to delay.

Mr. Reader stated wouldn't releasing the bonds be easier if the process was over.

Attorney Lentine replied yes.

Mr. Kenyon asked how long do you think this process will take.

Attorney Lentine replied probably until the end of March early April.

Mr. Kenyon suggested that Town Counsel should be involved.

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

Mr. Kenyon made a motion that the bond be released, however there should be no occupancy of the buildings until it is foreclosed on and before any occupancy permit is issued a bond must be posted.

Mrs. Giroux stated would it be best to wait until all legal obligations in this matter are resolved until Steve's name is not on the deed before anything is released. This will give the Mr. Berube and the Board time to discuss this matter with the Town Manager and Town Counsel.

Mrs. O'Rourke stated there could not be two motions.

Mr. Kenyon withdrew his motion.

Mrs. Giroux made a motion to reconvene and take this matter under advisement with Town Counsel then the Board will agree with Mr. Berube's recommendation

Mr. Kane seconded. So voted unanimously.

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

The Board adjourned at 10:00 p.m.

Respectfully submitted,

Sandra Giroux  
Secretary

Joanne M. White  
Recording Clerk