

**BOARD OF HEALTH MINUTES  
MARCH 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, Joanne White, Recording Clerk and Ms. Jena Caruso Muñoz, Town Counsel.

**ACCEPTANCE OF MINUTES**

Mr. Kenyon made a motion to accept the Meeting Minutes of February 1, 2010. Mrs. Giroux seconded. So voted unanimously.

**CORRESPONDENCE**

**Public Hearing On Women's Issues**

Mr. Berube explained that a copy of an invitation from the Massachusetts Commission on the Status of Women is included in the Boards package. The Public Hearing is on Women's Issues. It will be held in the Pollard Memorial Library on Merrimack Street in Lowell on Wednesday, March 31, 2010 for anyone that maybe interested in attending. The invitation lists a number of topics that will be discussed.

**Montgomery Energy Billerica Partners**

Mr. Berube explained that enclosed in the Board's package is a copy of a letter from Montgomery Energy Billerica Partners, LP requesting the withdrawal of the subject Non-Major Comprehensive Plan Application, to the Department of Environmental Protection (DEP). There will not be any plans for the time being.

Mr. Kane asked since they are withdrawing the application with DEP, if they decide in the future to go forward with their proposal would they have to begin the process all over again with the Board of Health.

Mr. Berube explained that they never really started the process with the Board of Health. The only board that they had any activity with was the Conservation Commission.

**Billerica Health and Wellness Fair**

Mr. Berube explained that he received a letter from the Billerica Lions Club. The Lions Club and the Billerica Lodge of Elks are having a Health and Wellness Fair at the Billerica Elks on Saturday, April 10, 2010.

**Water Conservation Oversight Committee Appointment**

Mrs. O'Rourke explained that Fred Kenyon did not realize that his appointment to the Water Conservation Oversight Committee had expired. Fred called me and I contacted the Town Clerk, Shirley Schultz and she told me that Fred needed a letter of reappointment from the Board of Health. Mr. Berube sent a letter to Lee Dubuc, Chairman of the Water Conservation Committee, the Town Manager, John Curran, the Board of Selectmen and the Board Members reappointing Fred Kenyon as the Board of Health's representative.

**BOARD OF HEALTH BUSINESS**

**McFarland Cascade**

Mrs. O'Rourke requested that a motion to be made to have McFarland Cascade present at the April 5, 2010 Board of Health meeting.

Mr. Reader made a motion that McFarland Cascade would be rescheduled for the April 5, 2010 Board of Health Meeting. The Board requests that McFarland Cascade provide the Board with a relocation plan of the utility poles and a detailed air sampling plan one (1) week prior to that meeting explaining what McFarland Cascade plans on doing in May.

Mrs. Giroux seconded. So voted unanimously.

**Special Permit Zoning Article**

Mrs. O'Rourke stated the first item under Board of Health Business is the Special Permit Zoning Article.

Mr. Berube explained that the Planning Board has sent a memo regarding a Special Permit Zoning Article that was withdrawn at Town Meeting. The Planning Board and the Zoning Board of Appeals will be holding a work session on March 3, 2010 at 5:30 p.m. in the Planning Board Office to discuss a proposal to amend the zoning by laws. The purpose of this work session is to try to improve communications between the Board of Appeals and the other Boards and Commissions in the Town so

that everyone is aware of the new projects that come into Billerica and will have the opportunity to comment on the projects.

Mrs. O'Rourke asked Mr. Berube if he was planning on attending the meeting.

Mr. Berube replied yes. If any of the Board Members would like to attend the meeting, it is on March 3<sup>rd</sup> at 5:30 p.m. in the Planning Board office.

### **Billerica Mall**

Mrs. O'Rourke stated the next item is the Billerica Mall.

Mr. Berube explained that the Board of Health closed the Billerica Mall on Thursday, February 25, 2010. Health Agent, Angela Braun was conducting a routine inspection at Mall News when she observed water leaking from the front entrance and debris falling from the ceiling. Ms. Braun contacted me and I asked her to go down and check out the conditions at Papa Gino's Restaurant. Ms. Braun informed me that the floor was flooded and the doors were locked. There was no safe means of egress down by Papa Gino's. We contacted the Fire Prevention Bureau, the Inspector of Buildings, Mike Kinney, the Town Manager, John Curran and we all went over to the mall. We checked out all the conditions in the mall and with all the rain that we recently had there was no safe means of egress in the mall. So we made the decision to close down the mall until some actions were taken to clean up the water that was dripping everywhere and making the entrances to the mall unsafe. A crew worked all night to clean up so we allowed them to open Friday morning, February 27<sup>th</sup>. We also issued an order for RD Management to come up with a long-term plan of corrective action. We will be meeting with RD Management on Tuesday, March 2<sup>nd</sup> at 12 noon. The manager, Steve Glaser has been laid off so we will be meeting and dealing directly with the Vice President of Operations, Barbara Ensign. We need for RD Management to come up with some long-term commitments to fix the mall.

Mrs. O'Rourke agreed with Mr. Berube that RD Management needs to fix the mall and make it more appealing for the residents. Mrs. O'Rourke asked the Board Members if they had any questions.

The Board Members did not have any further questions.

### **Aspen Apartments**

Mrs. O'Rourke stated the next item is Aspen Apartments.

Mr. Berube explained that in the Lowell Sun there was an article stating that the Aspen Apartment project decision has been remanded back to the Board of Appeals. We will probably have an opportunity to comment on the plans. Mr. Berube explained because of the problems with Swanson Meadows I am concerned that there will be some issues with this project. The proposed project is right next to an industrial zone, which means there will be noise and odor issues.

Mrs. O'Rourke asked where the proposed project is going to be located.

Mr. Berube explained the project would be located next to Cirriculum Associates on Rangeway Road. If anyone has gone by the site, it is a swamp.

Mr. Reader asked is Chelmsford appealing the decision.

Mr. Berube replied yes, that is the reason why the judge remanded it back to the Board of Appeal.

Mrs. Giroux asked when do you think we will hear more about Aspen Apartment project.

Mr. Berube replied he did not know but he would keep the Board apprised of the situation.

**7:45 p.m. Charles W. Wright, Sr. – 93 Bellflower Road – Request a Waiver of Regulations for work within the Flood Plain**

Mrs. O'Rourke stated the first hearing on the agenda is Charles W. Wright, 93 Bellflower Road requesting a Waiver of Regulations for work within the Flood Plain.

Charles Wright, 93 Bellflower Road, Billerica, identified himself. Mr. Wright explained that he lost his home to a fire in December of 2009. Mr. Wright explained that he would like to extend the front porch across the front of his house to make it a farmer's porch, move the deck from the side of the house to the back of the house and add a chimney chase.

Mrs. O'Rourke asked Mr. Wright how long he has owned the house at 93 Bellflower Road.

Mr. Wright replied three (3) years.

Mr. Berube asked Mrs. O'Rourke if she recalls that this house belonged to the Bertrams. The Board granted them a variance back in 1991. This house has a long history. Mr. Wright has included pictures of what burned down. The proposed house will be built on the same existing foundation. The only difference is that instead of the stairway in front there will be a farmer's porch.

Mrs. O'Rourke asked will it be possible to build a farmer's porch because of the flooding that occurs in that area.

Mr. Wright explained the porch is going to be above the flood zone. The bottom of the porch will be above the flood zone and there will be two (2) windows in the living room.

Mrs. O'Rourke asked if the electrical wires and box were going to be above the flood zone.

Mr. Wright explained that the electrical box will be located in the living room.

Mrs. O'Rourke asked will this proposed house be heated by oil or gas.

Mr. Wright replied we will using gas heat.

Mrs. O'Rourke asked where the heating system will be located.

Mr. Wright replied the heating unit will be located on a pedestal in the cellar.

Mrs. O'Rourke asked is your electrical panel up high.

Mr. Wright replied that the electrical panel was always in the living room on the first floor.

Mrs. O'Rourke stated that she thought it was downstairs.

Mr. Wright replied the meter was located outside downstairs but the circuit breaker panel was always located in the living room.

Mrs. O'Rourke stated this house has always had a water problem.

Mr. Berube explained that in the original variance that was granted in 1991 the Board made a condition that the electrical panels had to be above the flood elevation and they also had to locate the utilities as high up as possible.

Mr. Kenyon asked when the farmers porch is built will it change the setback from the porch to the street.

Mr. Wright explained and pointed to the plans that it would be the same as what is currently there.

Mrs. O'Rourke asked does the water come up pretty close to the house when it rains.

Mr. Wright replied it hasn't since I have lived there but I do not know what happened before.

Mrs. O'Rourke asked Mr. Wright if he filled in the back yard.

Mr. Wright replied that he did not fill in the back yard.

Mr. Reader asked when the Shawsheen River is high does the water come into the back yard.

Mr. Wright replied that the water comes up close to the garage but it does not come up into the back yard.

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

The Board did not have any questions.

Mrs. Giroux made a motion to grant a waiver of Billerica Health Regulations, Chapter 5, Section 5.5.005 (1) to allow the reconstruction of a single family dwelling located at 93 Bellflower Road within the FEMA Flood Plain based upon the following findings of fact and subject to the following conditions:

**FINDINGS OF FACT**

- 1) The work described in the applicant's request is within an area subject to protection under the Board of Health's Rules and Regulations, Chapter 5, Section 5.5.005 (1).
- 2) The applicant proposes to reconstruct a single family dwelling located in the Flood Plain that was destroyed by a fire. The new construction shall utilize the existing foundation.
- 3) In 1991, the Board of Health granted a variance from the Board of Health Regulations to allow the construction of the previous single family home.
- 4) The Board of Health has determined that the actions proposed by the applicant are adequate measures to protect public health and the 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 the environment.

**CONDITIONS**

Standard conditions number 2, 3, 4, 5, 6, 10, 11, 12, 13, 14, 15 and 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 July 3, 2008 and revised to August 25, 2008 and stamped by Joel Williams, RPE #29522 and architectural plans prepared by Silverwatch Architects, LLC.
- B) The applicant must provide final approved plans for any project covered by the conditions. Final plans are considered plans approved by all town departments.
- C) The basement area shall not be used as living or bedroom space.
- D) All bedrooms and electrical subpanels shall be located at or above elevation 98.
- E) All utilities shall be located as high as possible in order to prevent loss from potential flooding.

Mr. Reader seconded. So voted unanimously.

**8:00 p.m. Stephen Dresser – Swanson Woods, Rangeway Road – Continued Hearing for Release of Bonds**

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

Steve Dresser, P.O. Box 837, Billerica MA identified himself. Mr. Dresser explained that he was before the Board last month and the Board voted to continue the hearing and seek advice from Town Counsel. Mr. Dresser asked Mr. Berube if had received a letter from Town Counsel.

Mr. Berube explained that he did not receive a letter from Town Counsel but he talked to Pat Costello. Jena Caruso Muñoz is present tonight to discuss this matter.

Ms. Muñoz explained that she discussed the situation with Pat Costello and Mr. Dresser's attorney, Stephen Lentine. I don't think the Board should release the bond unless the work is completed. If the work is not completed then the Board should wait until the bank completes the foreclosure and sells the property and the new owner posts a new bond. At this point I would advise the Board to hold the bond. When a new bond is posted we can discuss to whom and where the bond should be released.

Mr. Dresser stated we do not know if the bank is going to sell the property. Typically with a foreclosure the bank holds the property. I don't know when a sale would take place. The purpose of the bond is to make sure that whoever delivers that product guarantees that the money would be there if something goes wrong. I am not the person who is going to guarantee that bond. Eventually the Board of Health would have a meeting with the new owner and they will have to post a bond. I can understand why you don't want to give me the bond back when the property is still in my name but once it is out of my name there is no reason for my cash to be held up on a property that I don't own.

Mrs. O'Rourke asked is the property still in Steve Dresser's name.

Ms. Muñoz replied yes.

Mr. Dresser replied that the foreclosure sale will take place on March 23, 2010. I would like to request that as soon as I can present a deed stating that I do not own the property any longer the Board could release the bond at that time.

Ms. Muñoz replied she would advise against that because we should have a new bond posted before we release the old bond.

Mr. Dresser stated the system is not currently working.

Ms. Muñoz replied if the bank forecloses and they decide to hold on to the property as the new owner then we would ask the bank to post a new bond. I would not advise the Board to release the bond until we have a new bond or until the work is done to the Board's satisfaction. That was the purpose of

the bond. The foreclosure does not change your responsibility to make sure that everything is done properly. It is my understanding that the bank will sell the property to someone new so that person will be dealing with Mr. Dresser and will go through the process of getting permits transferred and posting a new bond. At that point the Board can release the bond. That is my suggestion.

Mr. Dresser stated that it makes no sense. I explained my situation before and you are holding up a lot of money from someone that has none. Nobody is going to be using that septic system until someone comes in and gets an extended variance and posts a bond. Nothing can happen with the septic system. You are holding up my money for procedural reasons. What could possibly happen between now and when a unit is sold that you may have to use the bond. The pipes in the ground are not being used. What is the purpose of holding the bond when no one is living there? Someone is going to come in and apply for a variance with the Board and at that time you are going to tell them that they will have to post a bond. It maybe six months to a year before the bank sells the property. I don't understand why you are holding my money for something that is not mine. It doesn't make sense to me.

Mrs. O'Rourke stated that she will go along with whatever Town Counsel advises.

Mr. Reader stated as of now you are the owner.

Mr. Dresser replied yes, the foreclosure will take place on March 23rd. What I am requesting is that when I no longer own the property then I can get my money back. Nobody is using the septic system. A new bond needs to be posted before you can apply for a building permit. The septic system is not in. I understand that she is your legal counsel but I don't know if she understands how the septic system works and what the situation out there is and what the possibility of the septic system failing before the bond is turned over. The system is not being used.

Mr. Kane asked if there are any units for sale.

Mr. Dresser replied no.

Mr. Kane stated there is a sale sign out front.

Mr. Dresser explained that he has no control over the property. I have signed paperwork for the foreclosure saying that I would agree with them on the extension of the permits. It is up to the realtor to take the sign down. If a unit was being marketed they would have to come to the Board of Health for an occupancy permit. The bond will not be needed if the septic system is not being used. It makes no sense to hold up my money.

Mr. Reader asked were any of those units ever occupied.

Mr. Dresser replied no.

Mr. Kenyon asked are any of the units completed.



Mr. Dresser replied one unit is completed and one unit is 95% complete and one unit is just a shell.

Mr. Berube explained that at the last meeting my recommendation was that the bonds should not be released until someone else steps up and takes responsibility for the project. If not we may have a liability issue and if something should happen we may have to use the bonds.

Mr. Dresser stated that is my point nothing can happen that you would need to use the bonds for between now and when someone applies for a building permit. The septic system is not functioning. The bond is there in case something goes wrong. Nothing can go wrong if the system is not being used. My variance has expired and whoever takes it over it will be their responsibility to post a bond.

Mrs. O'Rourke asked is the septic system in place.

Mr. Dresser replied that the system is in place.

Mrs. O'Rourke stated that someone could move in without getting an occupancy permit.

Mr. Dresser replied and then if the system fails they would have to come to the Board and say there is a problem.

Mrs. O'Rourke stated that stranger things have happened.

Mr. Dresser replied that nobody could legally use that septic system until the bond is posted. Why would a bond be in place for a septic system that is being used illegally?

Mrs. O'Rourke stated that Mr. Dresser had a good point.

Mr. Berube asked if Steve or someone that is associated with the project would like to give the Board of Health an up to date report on where this project stands and what exactly has been completed maybe we could partially release the bonds. That is another alternative. We have not received any as-builts. The inspections were not completed.

Mr. Dresser replied that a consulting engineer was out there and charged me about five thousand (5,000) dollars to watch the installation of the septic system. You have a consultant who has done a lot of work out there and he should be able to tell you what has been completed. The pipes are in and the pumps were put in then the bank shut off the funding.

Mrs. Giroux asked how could we get a report of the status of the project.

Mr. Berube stated that he could ask our consultant but I do not know if he will be willing to produce a report because of the outstanding bill that has not been paid. I don't know where that money

is going to come from to pay that bill. No as-builts have been produced from the work that has been completed. We need the as-builts.

Mr. Dresser stated that typically we don't produce an as-built until we are ready to occupy a building. That is another way to show the septic system is not going to be used.

Mr. Berube stated we are not just talking about the septic system we are also talking about the drainage.

Mrs. Giroux asked so there is no way to confirm what the status of the project is.

Mr. Kane stated that we heard there was a difference of opinion between the attorneys from the bank and Mr. Dresser's attorney regarding who actually owns that bond. Have we heard anything about a resolution from the two attorneys or from the court system as to whom the bond should be released to?

Ms. Muñoz recommended that the Board does not release the bond to Mr. Dresser. I did not look into whom the bond should go to. I would have to see the bond itself, the terms of the mortgage and the funding. My assumption would be that once the foreclosure is complete and the bank has gotten full restitution for what they have paid the bond would be returned to Mr. Dresser. If the bank has not received full restitution for the money that had been lent out on the project then either all or a portion of the bond would be released to the bank.

Mr. Dresser replied that is not how the agreement was made. The agreement is between the bank and I. It does not have anything to do with the Town of Billerica.

Ms. Muñoz stated it would have something to do with the Town only because the bank made a request that the bond should go to them. So if the Board votes to release the bond tonight I would request that the Board would hold off releasing the bond until I have had a chance to look into who is actually entitled to the bond.

Mr. Dresser stated that because of my financial situation I did not bring my attorney with me tonight, I thought from the conversations this was going to be straightforward. The Board's regulations are very specific and state that the bond is to be released to the person who takes the bond out. After the bond is released it is between the bank and I. It is really none of the Board's business. The agreement that I made with the bank for the foreclosure should not have to come before a public hearing and I should not have to explain my financial situation.

Mr. Reader stated that he agreed with Mr. Dresser and sympathizes with his situation but the Board cannot go against Town Counsel's recommendation.

Mr. Dresser stated the point of a public board of citizens is to make their own decision.

Mr. Reader replied that legal counsel suggests that the Board should not release the bond. I sympathize with your situation but the Board would be hard pressed to release the bond. It puts the Board in a tough position. But that is why we have Town Counsel.

Mr. Kenyon stated that he made the motion at the last meeting to consult with Town Counsel and we have. I think we need to go along with Town Counsel's recommendation and not release the bond.

Mr. Dresser stated I thought that Town Counsel stated that once a new bond is in place the bonds could be released to me.

Ms. Caruso explained that once the bond is replaced I would have no problem releasing the bond but I do not know to whom the bond should be released to at this time. I am not saying it would not be to Mr. Dresser. When the bond is replaced I will advise the Board to whom the bond should be released.

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

Mr. Kenyon made a motion to deny the release of the bond based on Town Counsel's recommendation until such time that a new bond is in place then a decision will be made as to whom the bond should be released to.

Mrs. Giroux seconded. So voted unanimously.

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

The Board adjourned at 8:05 p.m.

Respectfully submitted,

Sandra Giroux  
Secretary

Joanne M. White  
Recording Clerk