

BOARD OF HEALTH MINUTES
APRIL 5, 2010

Marie O'Rourke, Chair called the meeting to order at 6:30 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.

Jena Caruso Muñoz, Town Counsel was also present.

ACCEPTANCE OF MINUTES

Mr. Kenyon made a motion to accept the Meeting Minutes of February 8, 2010. Mr. Kane seconded. So voted unanimously.

Mrs. Giroux made a motion to accept the Meeting Minutes of the regular meeting of March 1, 2010. Mr. Reader seconded. So voted unanimously.

Mrs. Giroux made a motion to accept the Meeting Minutes of March 1, 2010 Executive Session with the a correction. Mr. Kenyon seconded. So voted unanimously.

BOARD OF HEALTH BUSINESS

Nomination of Inspector of Animals

Mrs. O'Rourke stated the first item under Board of Health Business is the Nomination of Inspector of Animals.

Mr. Berube explained each year in accordance with the Massachusetts General Laws Chapter 129, Sections 15 and 16 each city and town is required to nominate one or more Inspectors of Animals. The completed form was due back to the Bureau of Animal Health by April 1, 2010. Mr. Berube

explained that he submitted the paperwork and nominated Diane Allen Murphy as the Inspector of Animals. I am requesting the Board ratify the nomination.

Mrs. O'Rourke asked Mr. Berube how long Diane Murphy has been the Inspector of Animals. Mrs. O'Rourke commented that she does a good job.

Mr. Berube replied that he did not know but she is very conscientious and cares a lot about the animals. She loves animals and is very concerned about their welfare. Diane has been with us a long time.

Mrs. Giroux asked if anyone else has expressed an interest in the position.

Mr. Berube replied for a short time we had a different animal control officer but he was interested in becoming a police officer. This is what Diane wants to do and loves what she is doing.

Mrs. O'Rourke asked when the job became available was it posted and was she the only applicant. Do we still have the part time Inspector of Animals?

Mr. Berube replied yes, the job was posted however I don't know if she was the only applicant. Maureen Ray is the part time inspector.

Mrs. O'Rourke asked for a motion to ratify the nomination of Diane Allen Murphy as the Inspector of Animals.

Mr. Kenyon made a motion to ratify the nomination of Diane Allen Murphy as the full time Inspector of Animals in Billerica.

Mrs. Giroux seconded. So voted unanimously.

Aerial Larvicide Program

Mrs. O'Rourke stated the next item is the Aerial Larvicide Program.

Mr. Berube explained that in the Board's package is a copy of a letter explaining the commencement of the Central Mass. Mosquito Control Project (CMMCP). The aerial larvicide spraying of the wetland areas in Billerica is scheduled in about two (2) weeks. Mr. Berube explained that is when the helicopter treats the low-lying swampy areas where mosquito larvae are present. Residents can also request localized spraying on their property. If anyone needs that phone number they can contact the Board of Health office. Aerial spraying will be advertised in the Lowell Sun and the Billerica Minuteman. Information regarding the spraying will also be on the Town of Billerica's website and BATV as well. Mr. Berube asked the Board Members if they had any questions.

Mr. Reader asked when will the catch basins be cleaned out.

Mr. Berube replied they usually clean out the catch basins in late spring or early summer and then the catch basins are treated.

Mr. Reader asked who cleans the catch basins.

Mr. Berube replied the Department of Public Works (DPW) Highway Division.

Mrs. O'Rourke asked doesn't an outside company clean the catch basins.

Mr. Berube explained that an outside company cleans the catch basins, but the Highway Division or the Cemetery Parks and Trees Division will follow up and treat all the catch basins.

Mrs. Giroux asked will they be doing the treatments more than once because of all the rain we have had.

Mr. Berube replied when they treat the catch basins they drop a briquette into the basins and it lasts about 120 days. So that should be enough to get through the summer.

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

The Board Members did not have any questions.

Water Flooding Update

Mrs. O'Rourke asked Mr. Berube if he could update the Board on the water and flooding situation from the last storm.

Mr. Berube explained that for the past month he has been dealing with all the flooding issues. The Shawsheen River set an all time record high. During the first series of storms that we had in early March, Boston Road was closed down to the Shawsheen River. We had to close the Jade Pacific, the Pongal Restaurant and Angelina's. They were closed for a day or two. We had to wait for the floodwaters to recede before they could reopen. They had to clean up their property before they reopened. The Concord River came up after the Shawsheen River and that is when Boston Road experienced some flooding down by Iversen Ford. We have not seen that happen in quite some time. The water in the parking lot at Stelio's got very high and that forced them to close. Fortunately for Stelio's the water did not get into the building and cause any damage or loss.

Mrs. O'Rourke commented that is because when the building was being built the Board of Health had them install a pipe storage system underneath the foundation.

Mr. Berube explained that Stelio's had to close for a couple of days because nobody could get into the parking lot.

Mrs. Giroux asked about the residents.

Mr. Berube explained that many residents that never had water problems had water problems this time. There were a couple of houses that had oil tanks floating in their basements and there was an oil release and we had to deal with that situation.

Mrs. O'Rourke asked did we have to evacuate anyone from their homes.

Mr. Berube replied most of the people that have experienced flooding in the past, knew how to handle the situation. The Concord River hasn't had a chance to recede because there was such an accumulation of rain. The river is still high and above flood stage. The river will not go down until later this week. The ground is saturated. We observed a few septic system failures and as a result sewage backed up into the homes.

Mrs. O'Rourke asked if the Emergency Management Team participated.

Mr. Berube replied that all the Town Departments met in the Emergency Operation Center in the Police Department to go over how emergencies and flooding issues were going to be handled. FEMA has many programs that resident's can participate in. We have posted all the information on the Town of Billerica's website. A resident can also contact Disaster Relief of New England Baptist Convention by calling 211 for help. They are the third largest aid organization in the United States. They are very big down south. The last couple of years they have been volunteering their help in New England. They provide assistance to many families that seek their aid.

Mrs. O'Rourke asked aren't all residents eligible for MEMA along with FEMA.

Mr. Berube explained that all help goes through FEMA. The Federal government pays up to 75%.

Mrs. Giroux stated before you can seek help from FEMA your claim has to be denied from your insurance company.

Mr. Berube explained that there are many assistance programs available. Residents should check the Town's website and FEMA to see what is appropriate for them.

Mrs. Giroux stated the government has given people an extension on filing their income taxes until May 11, 2010.

Mr. Reader asked with all this rain we have had what is the situation at the Billerica Mall.

Mr. Berube explained that the Health Department checked out the mall and the occupied sections stayed relatively dry. RD Management did a good job of keeping on top of things.

Mrs. O'Rourke asked about inside the middle of the mall.

Mr. Berube explained that they still have a problem there. They are looking to get some quotes to demolish that area. They are looking to complete the re-roofing of the entire mall. Some progress is being made.

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 stated that the Committee met on March 17, 2010. Mr. Kenyon explained that he presented the question that Mr. Berube had asked regarding the possibility of getting water from a well. There is a place in town called Jones Forest, however, John McGovern explained that mixing well and surface water presents problems in terms of water purification. It is not a very good idea. Well water has mineral problems and river water has organic problems so it would not be a good idea to mix well and surface water. Our guest speaker was Liana Measmer, The Editor in Chief of the Billerica Green. Liana's monthly paper is delivered to all addresses in the Town of Billerica, which makes it an excellent method of communicating Billerica's water conservation needs. Liana has agreed to place an article in her next four (4) additions of the Billerica Green paper. The first article will be on Water Treatment; the second will be on How to Conserve Water; the third will be on Why Water Conservation Is Necessary and the last will be the Wastewater Treatment Process. Liana sends out approximately 18,000 to 19,000 publications a month so this will be a good way of spreading the word about water conservation.

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

The Board Members did not have any questions.

Public Health Nurse Update

Mrs. O'Rourke stated the next item is an update from the Public Health Nurse.

Mr. Berube explained that Christine West, the Public Health Nurse has provided the Board with an update regarding the flu season. The memo explains what services she has provided to the general public. The H1N1 flu activity has ceased for the time being, although Christine will still be vaccinating with the H1N1 vaccine throughout this spring. The seasonal flu was not seen this past season. The H1N1 strain will be incorporated with the regular seasonal flu vaccine for 2010-2011 season so there will only be one shot instead of two. Christine has also provided the residents with the shingles vaccine. The response from the public has been very good. The Board of Health was notified that the yearly Health Fair would be cancelled therefore Christine cancelled the order of adult Tdap vaccine and nursing staff along with Head School Nurse Carole Butze and other members in the Health Department. Two (2) weeks ago we were notified that the Billerica Lions and the Billerica Lodge of Elks were going to have a Health and Wellness Fair unfortunately that was too short of a notice because everyone had rearranged

their schedules. However, Christine was able to encourage the MRC (Merrimack Reserve Corps) to continue with their booth and we would supply them with some Board of Health information for their table. MRC works with the local Boards of Health in emergencies and promotes wellness.

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

The Board Members did not have any questions.

6:45 p.m. Rules and Regulations Review – Stormwater Management Regulations

Mrs. O'Rourke stated the first hearing on the agenda is the Stormwater Management Rules and Regulations Review. Mrs. O'Rourke asked the Board Members if they had read the packet that was provided regarding the revisions and additions.

Mr. Berube stated that included in the Board's package is a copy of the Executive Summary. Mr. Berube explained that Emily Scerbo, Woodard & Curran is present to give a brief presentation on the regulations.

Mrs. O'Rourke stated that she had a couple of questions. Mrs. O'Rourke stated that she did not see any information regarding variances and that they are not transferable. Second thing is on page 46 regarding the Title 5 Test. Who gives the Title 5 test and what score is needed to work in Billerica?

Mr. Berube explained that the information on the Title 5 test is an existing regulation and has not changed. The changes in Chapters 1 and 5 are highlighted in blue and all of Chapter 6 is new. As far as variances go they usually go with the property.

Mrs. O'Rourke stated that she was under the impression that variances were not transferable but she could not find it in the regulations.

Mr. Berube replied variances usually go with the property and there is a time limit on the variances.

Mrs. O'Rourke asked shouldn't it be stated somewhere in the regulations that variances are not transferable.

Mr. Berube stated he will review the regulations and then come back before the Board with an option as to where the statement could be inserted. Tonight we are focusing on the Stormwater Regulations because that is what this hearing is all about. There will be another meeting with more proposed regulations in the near future. It was too cumbersome to have all the proposed regulations at one hearing. Mr. Berube explained that at another hearing we will be revising our flood plain regulations so that we comply with the National Flood Insurance Program. FEMA has updated their

maps and they will be publishing them in June. Mr. Berube stated that Emily Scerbo is present to explain the stormwater changes and answer any questions that the Board may have.

Emily Scerbo, Woodard & Curran identified herself. Ms. Scerbo explained that she has been working with the Town of Billerica since 2002 on the Stormwater Regulations Program. Mr. Berube asked me to be present to explain to the Board and answer any questions regarding the adoption of the stormwater regulations. The Stormwater Management By-law was adopted at the 2007 Fall Town Meeting. The by-law was a requirement of the Environmental Protection Agency (EPA) NPDES Stormwater program, which the Town has fallen under since 2003. A large group of people created the by-laws and the regulations. The group consisted of the Town Departments, residents and local stakeholders. The intent was to create a consistent set of stormwater standards for projects that fall under different jurisdictions within the Town such as the Conservation Commission and subdivision site plan reviews that would have to follow the Massachusetts Stormwater Standards. We targeted large projects and used the EPA minimum threshold of one (1) acre. We weren't trying to create a by-law and regulations that were going to require extra permits for projects that wouldn't normally need a permit. The group chose the Board of Health as the stormwater authority because the Board of Health is already conducting drainage reviews for subdivisions and other smaller projects. The regulations are necessary for implementing the by-law. The by-law sets up the procedures, design criteria, performance criteria and enforcement criteria so that the by-law can go into effect.

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

Mr. Berube explained that the existing chapters that are affected are Chapters 1 and 5. Chapter 1 is the Administrative Procedures. Those changes were made to recognize the stormwater regulations. In Chapter 5 we already have existing drainage regulations, which we had to modify. We did not want to eliminate all of our existing drainage regulations because the threshold is one (1) acre. We wanted to make sure that if there was a project that was underneath the threshold we could still address it because it could still cause a problem (like a single house lot). So we modified our existing regulations under Chapter 5 to cover any issues that are not covered under the new proposed regulations in Chapter 6. Chapter 6 is all the new regulations.

Mrs. O'Rourke asked if the Town Manager, Building Inspector, local environmental groups, members of the Board of Health, Conservation Commission, the Planning Board and the Department of Public Works all had input into these regulations.

Mr. Berube replied yes, many meetings were held to discuss the proposed regulations. Diana MacLeod, Civil Engineer and Kelley Conway, the Town Engineer from the DPW Engineering office are present tonight if anyone has any questions. They were involved with the meetings.

Mrs. O'Rourke asked the Board Members if they had any questions for anybody. Does anyone have questions regarding the new Stormwater Rules and Regulations?

Mrs. Giroux asked under penalties do we need to state specifically who is going to enforce the penalties.

Mr. Berube replied it is the Board of Health.

Mrs. Giroux asked does it need to be specifically stated in the regulations who will be writing the citations or is it just assumed.

Mr. Berube replied that it is stated under Chapter 1 in the Administrative Procedures and it is also stated again in Chapter 6. It explains the different methods of enforcement and the fines.

Mrs. Giroux stated that under penalties it mentions warnings, fines and suspension of permits, is there another way for people to take compliance more seriously?

Mr. Berube replied it is a step by step procedure. You have to look at the level of the violation and decide what enforcement should be taken.

Mrs. O'Rourke asked if anyone in the audience has any questions regarding the proposed Stormwater Rules and Regulations.

Paul Hayes, North Billerica, Disposal Works Installer for the Town of Billerica, identified himself. Mr. Hayes stated that he heard from Mr. Berube that we have to raise the risers off the septic tank and I think that is a good idea. Is that one of the new regulations?

Mr. Berube explained that is another change under Chapter 5 Septic System Regulations. The Board of Health is going to require two (2) compartment tanks for single-family dwellings because people are abusing their septic system by installing garbage grinders or finishing their basements and adding a bathroom with an ejector pump that will discharge into their septic tank. Then the septic system is ruined. This is a preventive measure. We do not have the resources to follow-up to see that residents are not illegally installing garbage grinders or ejector pumps in their homes. The minor cost of the two (2) compartment tank is well worth it to protect the home owner's septic system especially when they are investing that kind of money in a septic system.

Mrs. O'Rourke asked is that for everybody.

Mr. Berube replied that is for new and replacement systems.

Mrs. O'Rourke asked is it specifically for people that are in the high water table area.

Mr. Berube replied it does not make a difference where the location is. When someone is replacing their system or constructing a new house we want to make sure that the system is going to last a long time. Some people are not aware that they cannot have a garbage grinder or finish their basement and add a bathroom. The ejector pump from the bathroom pumps into their septic system and causes a

problem when the pump kicks on. Before you know it their leaching system is clogged and they don't know why. This is a way to avoid that from happening.

Mr. Reader asked how do you make them aware of the potential problems they can create for themselves.

Mr. Berube replied the Health Department has information on maintaining a septic system. We provide that information to everyone that installs a new system or repairs their current system.

Mrs. O'Rourke asked Mr. Hayes if that answers his question.

Mr. Hayes stated that he has another question. Why do the risers have to have a cast iron cover? That could be dangerous when children play on the lawn. They have plastic covers. If you bring the risers up to six (6) inches of the finished grade it would be safer when children play on the lawn. Cast iron is good in driveways or streets but not on front lawns.

Mr. Berube replied the risers do not specifically have to be cast iron. The other change is to have a manhole to final grade so that it will be easier to locate the tank for pumping. The cover does not have to be metal, it can be plastic. The cover has to be secured so that children will not be able to fall into the tank.

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

No one had any further questions.

Mrs. O'Rourke asked Mr. Berube if he had any other comments.

Mr. Berube replied that he did not have any comments.

Mr. Reader made a motion to adopt the new Stormwater Management Rules and Regulations.

Mrs. Giroux seconded. So voted unanimously.

Mrs. O'Rourke thanked everyone that was involved with the regulations.

7:00 p.m. Town of Billerica – Allen Road Roadway & Drainage System Improvements – Request Waiver of Regulations for work within the Flood Plain

Mrs. O'Rourke stated the next hearing is the Town of Billerica, Allen Road Roadway & Drainage System Improvements requesting a Waiver of Regulations for work within the Flood Plain.

Darshan Jhaveri, Project Engineer from Beta Group, identified himself. Mr. Jhaveri explained that he was representing the Town of Billerica requesting a Waiver of Regulations for the Allen Road

Roadway and Drainage System Improvements from the Board of Health Rules and Regulations Chapter 5, Section 5.5.005 regarding the Flood Plain. This project is under design. It is a State funded project. The purpose of this project is to improve vehicular and pedestrian safety along the Allen Road corridor as well as to provide accessibility in compliance with the American with Disabilities Act and improve the water quality entering the adjacent wetland resources. The project includes Allen Road from Boston Road (Route 3A) to just south of Webb Brook Road, the section of Boston Road from just north of the Shawsheen River to just north of Tremlett Road and Marshbrook Road from Allen Road to Devonshire Drive. It is a one-mile roadway section. This will include widening the road by five (5) feet, installing curbing on both sides of the road and construct a new 6 foot wide sidewalk on the west side of the road. To improve the roadway and traffic, a traffic signal will be provided at the Boston Road intersection. Another improvement will be that the drainage system capacity will be increased. Starting at Boston Road near the Jade Pacific we are going to provide a water quality structure. Mr. Jhaveri explained that the existing drainage goes straight to the river. It won't increase the flow to the river. At the Marshbrook Road area the drainage system capacity will be increased to accommodate the project and up-gradient flows from Towne Plaza. The culvert crossing will be improved by providing a larger 24-inch outlet pipe and bring it down to the Marshbrook area. A detention basin will be provided at the Marshbrook intersection area, which will take all the water into the detention basin and then release it later. At Devonshire Drive a new sediment outlet is being proposed. At Arcadia Road the existing 24-inch culvert/pipe system that outlets through a 12-inch pipe will be fitted with an overflow pipe to eliminate flooding of the intersection at Arcadia Road and Allen Road. The last section is at the Webb Brook area where the existing culvert crossing is located. A detention basin will be provided near Bennett Circle. The 12-inch culvert near 160 Allen Road will be replaced at the same elevation. That will improve the roadway drainage. The project does not change the profile. The major change will be at the corner of Riverdale Road where there is a sharp curve. That section will be straightened out and made about ten (10) feet wider. That will take down the hill and a retaining wall will be provided.

Mr. Kenyon asked is there going to be sidewalks.

Mr. Jhaveri replied sidewalks will be provided all the way from Boston Road to Webb Brook.

Mrs. O'Rourke stated so you are going to cutout the dangerous curve.

Mr. Jhaveri replied yes.

Mrs. O'Rourke asked are you going to take any land.

Mr. Jhaveri replied yes but not on that corner.

Mrs. O'Rourke asked what will happen to the water that comes down Arcadia Road from Garden Brook Road and goes into the culvert. Is that road going to be made wider on that side?

Mr. Jhaveri explained how the water situation would be taken care of. Mr. Jhaveri replied that the road was not going to be made wider on the side of Arcadia Road.

Mr. Kenyon asked how much wider is the street going to be.

Mr. Jhaveri explained the street will be 26 feet wide. Right now it is 20 to 22 feet wide.

Mrs. O'Rourke stated this is a long time coming. It came before Town Meeting about 10 years ago.

Mr. Kenyon asked what is going to happen with moving the utility poles.

Mr. Jhaveri explained that MassDOT is looking into that. Once the plan is submitted we are going to have a meeting with all the utility companies out in the field.

Mrs. Giroux asked are the residents happy with this project.

Mr. Jhaveri explained that a public hearing will be scheduled with MassDOT and all the residents in that area. We will listen to their input and discuss their concerns regarding this project.

Mrs. O'Rourke asked where is the funding coming from.

Mr. Jhaveri explained it is state funded. NMCOG is the agency that is going to provide the funding.

Mr. Reader asked has it been funded.

Kelley Conway, Town Engineer, identified herself. Ms. Conway explained that it is scheduled on the 2012 TIP. The project will probably begin in the spring of 2012. We need to have a public meeting and kick off the Right of Way Phase of the project. We also need to acquire temporary or permanent easements from all the abutters along the way.

Mrs. O'Rourke asked Mr. Berube if he had any comments.

Mr. Berube replied that this project will improve the drainage and make the road a lot safer to travel on. It is long overdue. I recommend that the Board grant the waiver.

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

The audience and the Board Members did not have any questions.

Mr. Kane made a motion to grant the Town of Billerica a Waiver of Billerica Health Regulations, Chapter 5, Section 5.5.005 (1) (2) to allow the reconstruction of Allen Road and Drainage System Improvements within 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, and as per plan submitted by the Billerica Department of Public Works, is within an area subject to protection under the Board of Health's Rules and Regulations, Chapter 5, Section 5.5.005(1)(2).
- 2) The reconstruction of Allen Road will improve safety for motor vehicle and pedestrian traffic as well as upgrade stormwater management.
- 3) The proposed work will not negatively impact 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 2, 4, 5, 6, 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 Beta Group, Inc., dated January 27, 2010 and revised February 16, 2010 and stamped by Philip F. Paradis, Jr. RPE# 37845.
- B) Compensatory flood storage shall be provided for all alterations to the Flood Plain in accordance with approved plans. Documentation of the work (i.e. as-built plan) shall be provided to the Board of Health to satisfy the intent of this approval.

Mr. Kenyon seconded. So voted unanimously.

7:10 p.m. Dominic F. Montesanti, Jr. – 7 Morningside Drive – Request Variance for work within the Flood Plain

Mrs. O'Rourke stated the next hearing is Domenic Montesanti, 7 Morningside Drive, requesting a Variance for work within the Flood Plain.

Domenic Montesanti, Jr., 7 Morningside Drive identified himself.

Jennifer Montesanti, 7 Morningside Drive identified herself. Ms. Montesanti explained that they would like to construct an addition on their existing home at 7 Morningside Drive. We would like to construct a two-car garage with a breezeway and a room above it. The Green Engineering Flood Plain elevation is 98.5, which according to FEMA it is within the acceptable range. The foundation is going to be level with the driveway. The contractor will install flood vents in the foundation.

Mrs. O'Rourke asked is the addition going to be connected to your home.

Ms. Montesanti replied yes the breezeway will connect our home to the addition.

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

Ms. Montesanti replied a bedroom.

Mrs. O'Rourke asked if they were on Town Sewer.

Ms. Montesanti replied yes.

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

Mr. Berube stated that Mr. and Mrs. Montesanti came to me with their proposal and because their property is entirely in the Flood Plain I explained to them that they would have to come before the Board. I suggested that flood vents be installed in the garage because their entire property is in the flood plain. With the flood vents the water could flow in and out and that is acceptable by FEMA as well. The Board has granted similar variances like this before.

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) at 7 Morningside Drive in order to construct an addition in the Flood Plain and with the condition that flood vents be installed in the garage 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 construct an addition consisting of a garage with a room above which will be attached to the existing dwelling through a proposed breezeway. The site falls almost entirely within the Green Engineering Flood Plain as identified on the Green Engineering Flood

Plain Map #121 and the FEMA Flood Zone. The proposed work will include the installation of flood vents to allow flood water to pass through the proposed construction and prevent the loss of flood storage.

- 3) The Board of Health determined that the proposed construction will not negatively impact 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, 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.
- B) The flood vent units shall be installed with the bottom of the units level with the garage floor.
- C) Any chemical or petroleum products in the garage must be securely stored on a shelf at least three (3) feet above the garage floor.

Mr. Reader seconded. So voted unanimously

7:20 p.m. Ming Lu – 10 Shawsheen Road – Request Variance for work within 25 feet of the Flood Plain

Mrs. O'Rourke stated the next hearing is Ming Lu, 10 Shawsheen Road, requesting a Variance for work within 25 feet of the Flood Plain.

Thomas Roux, Civil Engineer, for the proposed project identified himself. Mr. Roux explained that he was representing Mr. Lu. Mr. Roux explained that he was asked to perform a soil evaluation, which was done in the right hand corner of the property. Mr. Roux gave the Board the plan that was accepted by the Conservation Commission. We have not changed that plan. The initial design showed the house much lower so we raised it up. There was evidence of groundwater at 76 inches, which is 6.33 feet below grade. The surface elevation of the test pit is 102. The groundwater elevation is at elevation 95.67 and the proposed basement floor elevation is at 101.1. That gives us a difference of 5.33 feet between the high ground water elevation and the proposed basement floor elevation. The other reason we are here is because the Green Engineering Flood Plain is at elevation 98.

Mrs. O'Rourke asked if the plan that the Board is reviewing is the same plan that Mr. Roux is referring to.

Mr. Roux replied yes.

Mr. Kenyon asked if the proposed house is going to be on the same foundation as the old one.

Mr. Roux replied the proposed house is going to overlap a little because the new house is going to be a little larger than the existing house.

Mrs. O'Rourke asked will the proposed house go into the driveway.

Mr. Roux explained that one corner of the house will be in the driveway along with the garage. I staked out the property using swing ties and a grade stake and labeled it. I also did off-set stakes so that when the contractors dig the ground they will know the location of the proposed house.

Mrs. O'Rourke asked does the existing house have a foundation.

Mr. Roux replied yes and a partial basement as well.

Mr. Reader asked is the proposed house going to have a foundation.

Mr. Roux replied yes.

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

Mr. Berube explained that the proposal is to raze the old house and construct a new house, which will be an improvement to the neighborhood. Some of the work that will be done will improve the drainage as well. I do not have a problem granting the variance. I visited the site and saw that there has been some past filling in of the flood plain with yard waste and debris. As a condition I would like the material removed.

Mr. Roux stated that is included in the Conservation Commission's order of conditions.

Mr. Kenyon asked will the house be heated by gas or oil.

Mr. Roux replied the house will be heated by oil because there is no gas on the street.

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

George Souza, 8 Shawsheen Road, Billerica identified himself. Mr. Souza explained that he lives in the house to the left of 10 Shawsheen Street. Mr. Souza stated that he was present at all the Conservation meetings. Mr. Souza asked how far is the proposed house going to be moved over.

Mr. Roux explained the location of the proposed dwelling on the plans. The proposed dwelling will be moved over approximately seven (7) to eight (8) feet.

Mr. Souza stated we have never had water in our basement. Since the March 17th storm the flood-waters have come up behind the deck where they are going to construct the new house. If the foundation is going to be larger and the water comes up again, is it going to flow side ways onto the side of my property. I am concerned because the water came right up behind us for the first time in history. The proposed dwelling is larger than the existing dwelling, which means there will be more water going to the side.

Mr. Roux explained that there is going to be less impervious surface on the site. The asphalt driveway is all impervious and that is going to be removed. As discussed at the Conservation meeting paver blocks are going to be installed. The paver blocks have spaces around them. Overall there will be less impervious surface.

Kathy Souza, 8 Shawsheen Street identified herself. Ms. Souza asked will the drainage system be installed.

Mr. Roux explained that originally the Conservation Commission said that they did not want roof drains installed. Then they changed their minds and said they did want the roof drains installed. Mr. Roux pointed to the plans and explained the location of the roof drains and the structures. The water will go down the gutter and directly underground into the chambers and dissipate into the sand. There won't be any runoff going over the lawn.

Mr. Souza stated that we are flooded right now and the water isn't going anywhere.

Mr. Roux explained that there will be sandy loam and the proposed structure would be installed down in the sand and the water would dissipate.

Ms. Souza stated that when we went to the Conservation meeting we talked about the flooding concern. Is this system going to prevent water from draining from the proposed property on to our property?

Mr. Roux explained along the property there is going to be a short wall so the runoff would go down the slope and hit that wall so it will not go onto your property.

Mr. Berube explained a few abutters came to the Board of Health office and I went over the plans with them because they had concerns about the drainage. I brought that to the attention of the applicant and Mr. Roux and a lot of those drainage concerns have been addressed in these plans.

Mr. Kane asked is there a decrease in the impervious surface with this plan. Your application states that there is going to be a .9% increase in the impervious surface.

Mr. Roux explained there will be a slight increase when the whole asphalt driveway is removed. Mr. Roux explained and pointed to the plans the area where the paver stones would be installed.

Mr. Kane stated when you talked about the impervious surface you did not talk about the loss of flood storage.

Mr. Roux stated that Markus Pinney, Director of Environmental Affairs asked me to write a summary when I submitted the Notice of Intent and explain how I was going to account for stormwater storage. I wrote a summary explaining how I intended to account for the stormwater storage and Mr. Pinney was satisfied.

Mr. Kane stated that flood storage is the Board of Health's jurisdiction.

Mr. Roux replied I have never had to go before a Board of Health for a plan like this, only if a septic system was involved.

Mr. Berube explained that when it comes to stormwater management, the Conservation Commission has overlapping jurisdiction with the Board of Health. The Conservation Commission has greater authority than the Board of Health when it relate to wetlands.

Mr. Kenyon asked did you have any problems with the setbacks because this house is right on Shawsheen Road.

Mr. Roux replied the only setback that we couldn't meet was the setback in the front yard because it requires a thirty-five (35) foot setback. That is why we are requesting a variance for a twenty (20) foot setback.

Mrs. O'Rourke asked what type of house will be constructed.

Mr. Roux replied a colonial.

Mrs. O'Rourke asked for a motion.

Mr. Kane made a motion to grant a Variance of the Board of Health Rules and Regulations, Chapter 5, Section 5.5.005 (1) (2) at 10 Shawsheen Road in order to construct a new single family dwelling within twenty-five (25) feet of the flood plain and clean up and dispose of the yard waste and debris that is in the back yard based on the following findings of fact and pursuant to the following conditions:

FINDINGS OF FACT

- 1) The work described in the applicant's request is within an area subject to protection under the Billerica Health's Rules and Regulations, Chapter 5, Section 5.5.005 (1) (2).

- 2) The applicant proposes to raze an existing dwelling and construct a new single family dwelling. The new dwelling will be serviced by town water and sewer.
- 3) The location of the proposed dwelling will be approximately within fifty (50) feet and twenty-five (25) feet respectively of the Green Engineering Flood Plain elevation 98 and the FEMA Flood Plain elevation 99. There will be no filling within the flood plain.
- 4) The Board of Health has determined that the actions proposed by the applicant are adequate measures to protect the public health and environment and complies with the intent of Board of Health Rules and Regulations. Further, approval of the applicant's request will not be detrimental to the public health and environment.

CONDITIONS

Standard conditions number 1, 2, 3, 4, 5, 6, 9, 10, 11, 12, 13, 14, 15, 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 Borderland Engineering, Inc. dated November 18, 2009 and revised to January 31, 2010 and stamped by Gregory A. Bunavicz RPE# 45851.
- B) These conditions must be properly recorded at the Registry of Deeds and a certified copy of these conditions must be returned to the Board of Health office indicating that a marginal reference was made on the original deed, prior to the Health Department approval of any building permit, occupancy permit, certificate of compliance, etc.
- C) All yard waste and debris found beyond the existing post and rail fence shall be removed and properly disposed of at a legal disposal facility prior to the approval of a building permit by the Board of Health. Proof of compliance shall be submitted to the Board of Health.

Mr. Reader seconded. So voted unanimously.

7:30 p.m. McFarland Cascade – Iron Horse Park – Continued Hearing for Air Monitoring

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

Chris Davis, Goodwin Proctor representing McFarland Cascade identified himself. Mr. Davis explained that the Board had requested a relocation plan of the utility poles currently stored at McFarland Cascade's Billerica site. On March 25, 2010 McFarland Cascade submitted a letter stating that they were going to vacate the pole yard and move all the poles to other locations. Currently, McFarland Cascade is working on terminating its lease. The plan is to phase out the operation over the next two (2) months. As a result we do not see the need to do any further air monitoring. As of March 29, 2010 the pole inventory is 859 poles. There are a couple of rail cars in transit but no more shipments

will be sent. The expectation is that all the poles will be off the site by June 1, 2010. McFarland Cascade will continue to meet its obligations of the Massachusetts Contingency Plan regarding the soil conditions. GZA's Licensed Site Professional will conduct the Phase II investigation this spring.

Mr. Berube stated that since they will be relocating, I don't know if the Board's order to conduct the air sampling is necessary. The Board may want to suspend the order and wait to see what happens in the future in case we have to revisit this situation if the odor problem continues. Hopefully by relocating the poles it will put an end to the odor problem.

Mrs. O'Rourke stated that Ms. Jena Caruso Muñoz, Town Counsel is present.

Ms. Jena Caruso Muñoz explained it is the Board's decision. If you are inclined not to have McFarland conduct the May 2010 air sampling then I would suggest that the Board suspend the order for the time being. I would also suggest that maybe McFarland could come back in June and give an update on whether or not the operation has been relocated. If you feel it would be necessary to do the air sampling at another time then the Board would have to issue a new order. By suspending the order tonight the Board would not require McFarland Cascade to conduct the May 2010 air sampling.

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

Mr. Kane stated that he is concerned because once McFarland Cascade has relocated all the poles any past air exposure to the residents would be after the fact. My only concern is if the order is suspended the ability would be lost to document the potential exposure source.

Mr. Reader asked is the order being suspended or postponed.

Ms. Caruso Muñoz explained if the Board votes to suspend the order any further air testing would require a new order from the Board. If the Board wants to allow McFarland Cascade the chance to remove the poles without spending the money to do the air testing then suspending the order would be the way to go. My advice would be that the Board revisits this in June to see what progress has been made and then the Board can proceed from there.

Mr. Davis explained that the company is incurring a lot of cost and business disruption in accommodating the Board and the residents and leaving this operation from a business perspective. McFarland would have preferred to stay in Billerica. I respectfully request that McFarland not be required to do air testing while the poles are being removed from the site. If there are odors after the poles are removed I would suggest that the Board looks at other sources in the Iron Horse Park area. I would like to further request that we can report via e-mail with the monthly status of the removal of the poles and that we do not have to appear unless there is a problem. I cannot guarantee that all the poles will be removed by June 1, 2010 but that is the goal. Steve Glennon will be working towards that goal.

Carole Legro, 5 Ashdale Road identified herself. Ms. Legro explained that she would like to comment on what Mr. Kane said that if the air sampling is done right now those of us who have documented symptoms of toxic exposure will be able to verify that there was something in the air. If we don't have the air tested before they start moving the poles out there will not be any proof of what was in the air. What is Phase II? Does that have anything to do with potential cleanup?

Mr. Davis explained that Phase II under the Mass Contingency Plan is the comprehensive site investigation, which is soil and groundwater sampling to determine the extent of impact to the soil. We don't expect that there will be any impact to the groundwater. The next step is risk assessment and assessment of remedial alternatives and selection and implementation of the remedies.

Richard Karamanian 4 Ashdale Road, identified himself. Mr. Karamanian stated that he has been leaving e-mails because the odor is still there. I think it is important to test the air before the poles are removed. There are various health concerns. Health Agent, Ms. Pheng has smelled the odor when she has come out to the area. One of the symptoms is headaches. Mr. Karamanian explained the symptoms that he has been experiencing. With all this rain what guarantee is there that the water is not being contaminated with PCP. Mr. Karamanian explained that it was stated in a flyer that PCP stays in close proximity to the poles. That is not true, one day he was on Route 495 and there was some new poles and you could smell the same odor. Mr. Karmanian stated that this Board represents the Town of Billerica residents and they have done everything in the best interest of the Town of Billerica residents. Mr. Karamanian asked Mr. Glennon if the old poles that are removed and are no longer in service were collected at Iron Horse Park.

Mr. Glennon replied no, the used poles are not collected from customers.

Mrs. O'Rourke stated that the Director, the Board of Health Staff and this Board have done everything to take care and address the problems in your area. I feel very bad that we have to put an operation out of business but it has to be that way. I hope after this is done that your problems are resolved. I am sorry for the medical issues that the residents in that area have but McFarland Cascade has made every attempt to do everything this Board has asked. This Board has done their very best on behalf of all the residents in your neighborhood.

Mr. Karamanian stated diplomacy was involved not litigation. Others may have wanted this issue to have been resolved much sooner.

Mr. Reader stated these things do not happen overnight. McFarland has worked with this Board. In fairness to McFarland Cascade they have worked with this Board to help us resolve this problem.

Mr. Karamanian stated he does not want anyone to say we should have looked at other avenues which may have caused this problem.

Mr. Reader replied there could other avenues. Mr. Reader asked Mr. Karamanian if he is 100% convinced that McFarland Cascade is the source of this problem. Mr. Reader commented as a member of this Board I am not 100% convinced that the poles are the source of this problem.

Mr. Karamanian stated that there are various people like Health Agent, Phavy Pheng, and some one from the Fire Department that have smelled the odor and confirmed that it is coming from the poles.

Mr. Reader stated that he is not 100% convinced that the poles are the only problem. I hope you are right, but I am entitled to my opinion.

Mr. Karamanian stated this has to be done clinically and scientifically.

Mrs. O'Rourke commented that Mr. Karamanian is entitled to his opinion.

Kathy Karamanian, 4 Ashdale Road, identified herself. Mrs. Karamanian stated that the smell is horrendous. It should have been taken care of a long time ago. I don't know who monitors the chemicals coming into Billerica. I am not blaming anyone. Mrs. Karamanian stated that she would like to smell the same air that the rest of the people in Billerica breathe. Her son is twenty-two (22) and is very sick. He is still going to the doctors and taking medication for stomach problems. I pay taxes in Billerica and I want the same air everyone else is breathing.

Mr. Kenyon stated within two (2) months the poles will be gone.

Mrs. Karamanian asked after the poles are gone who is going to take over that space. Is anyone monitoring this place? I was told it was not a superfund site then I was told it was a superfund site but it is being cleaned up. What is the point of cleaning it up if they are going to be dumping more bad stuff there?

Mrs. O'Rourke asked who says that someone is going to be dumping more bad stuff there.

Mrs. Karamanian stated that is what she wants to make sure that nobody will be doing that.

Mrs. O'Rourke stated the owner of the property is in the audience maybe he can address who is going to be in there.

Eliot Snider identified himself. Mr. Snider stated that probably no one will be going in there. There will be no revenue and the Town will not be collecting any taxes.

Mrs. Karamanian asked where is McFarland moving these poles to.

Mrs. O'Rourke replied that is not our problem.

Mrs. Karamanian asked is it going to be north or south.

Mark Sampson, 4 Carmel Drive, identified himself. Mr. Sampson stated that he wanted to follow up on his request that he made in April 2009. I requested that the Board works with the Water Department for the annual water testing to make sure PCP is being tested in the drinking water.

Mr. Berube stated that it was reported on in another meeting. The Water Department does test for PCP in the drinking water. The report from the Water Department stated that PCP it is not present in our drinking water.

Mr. Sampson stated that he is concerned because of all the rain we have been having.

Mr. Berube stated that it was mentioned that the water from here travels to the Shawsheen River water basin and not the Concord River. We get our drinking water from the Concord River.

Mr. Sampson asked where does Shawsheen River go.

Mrs. O'Rourke replied into the Merrimack River.

Mr. Sampson stated that Mr. Davis mentioned that after the poles are removed who knows if the smell will be gone. Mr. Sampson stated that we are going to smell what is in the soil. DEP's records state that there is stuff in the soil. This is going to be ongoing for however long it takes to clean up under the MCP. We will have to follow it.

Ms. Legro stated that she would like to thank the Board and McFarland Cascade for taking this first step in cleaning up this section of Billerica. I know that Mr. Reader may not be convinced that the smell is coming from the poles but if you get off the train in North Billerica and there are trains coming in the opposite direction you can smell the odor.

Mr. Kenyon asked is it possible to notify the other Boards in Town about new developments that may be interested in going into Iron Horse Park. How could we make sure that whatever goes into Iron Horse Park is carefully scrutinized so that no chemicals will come into this area?

Ms. Legro stated it would be a waste to have taken this first step and then have some thing else with chemicals want to go into Iron Horse Park.

Mr. Berube stated that he would give the audience a little history about the Town Boards. If you really want to address this issue we need to change the way we think as far as Planning Boards and Zoning Boards. When the Planning Boards and the Zoning Boards were first established in the 1800's it was because of Public Health. Coming into the 20th century they moved away from that aspect and that is the reason why we have a lot of the problems today because we neglected the public health aspect of planning and zoning and that needs to be brought back if you want to solve a lot of the problems that we have today.

Mrs. O'Rourke asked if a business wants to go into where McFarland Cascade is what would a potential business have to do to get a permit. Would they have to go before the Zoning Board of Appeals?

Mr. Berube explained it all depends on what they are proposing. The owner, Mr. Synder would have to present something to the Town. There is already an existing lumber company there. He could expand that lumber company on that property. The site where the poles are needs to be remediated. The area would be vacant until that is taken care of. Once that site is remediated and DEP determines that no further action needs to be taken, activity can take place there in the future. Mr. Synder can then take proposals for that area whether or not he brings it before the Town.

Ms. Legro asked what needs to happen in order for a clean air type of industry to come into Iron Horse Park. Is there any recommendation that the Board of Health would make to the owner and to other Boards in the Town?

Mr. Berube explained hopefully when the property owner wants to develop or redevelop his property he would meet with the Town and the various Town Boards so that we can review what is being proposed and make the necessary recommendations and inform them of what permits will be needed from the Town.

Ms. Legro asked what is different now than what has happened in the past.

Mr. Berube replied that the pole storage facility has been there for over fifty (50) years. Mr. Synder could probably tell us when they started to store poles on that property. The Town government was different. The rules and regulations were different back then.

Mr. Synder stated that his company bought the site in 1954 and since that time it has been operated as a lumberyard and for much of that time poles were stored at that location. I was told that PCP does not have a smell but that the oil that deposits the PCP does have a smell. For seven (7) years the EPA tested the water quarterly and nothing was found in the water so finally they said don't bother testing the water any more.

Lynne Santos, 29 Seven Oaks Road identified herself. Ms. Santos stated that she would like to comment on the air sampling. For those people that are suffering with health issues, without the air sampling they will not know what level of pollution they were being exposed to. That maybe something they may want to know. Ms. Santos explained other air sampling and modeling techniques that could be done. I just want to point out that without the air sampling the residents who are having health issues will not know what level they are being exposed to.

Mr. Kenyon stated that at one of the meetings, he asked Mark Sampson if he knew what conditions Carole is being treated for. Mr. Kenyon asked Carole if she could tell the Board what she is being treated for.

Ms. Legro explained that she was being treated for acute toxic exposure. It is documented that I have symptoms of toxic exposure. A year and a half later the EPA report listed all those symptoms. At first I did not know what it was but I knew I smelled something. I did follow through with the testing of the street drug PCP instead of Pentachlorophenol and so I have to be tested all over again. The test results came back that I did not have Pentachlorophenol in my blood but that was because I was being treated for a year and a half with an experimental drug so I am not a good subject. They were able to test for the inorganic material but not the organic material because of their equipment. So I was not in a hurry to give the information to the Board because I have been treated for the last year and a half.

Mr. Synder explained that in the fifty-five (55) years that the company has operated in that location there has been a substantial number of employees who have worked on the site and to the best of my knowledge not one of the employees has had any of the symptoms.

Mr. Sampson thanked the Board of Health for their fine job. Mr. Sampson stated that knowing how slow corporations move this great because it has only taken thirteen (13) or fourteen (14) months.

Mr. Berube commented that the Board has to make a decision. The Board can either suspend the order or uphold it. Just keep in mind that if McFarland does the air sampling that it is going to be slightly skewed because the poles are being removed from the site. You will not be getting a good representation of the past summers unless they delay the relocation of the poles so that you can get a more accurate reading.

Mrs. O'Rourke asked Steve Glennon when he anticipates moving the poles.

Mr. Glennon replied we started to move the poles last week however new rail cars that have arrived we are sending the poles to our customers and other plants.

Mrs. O'Rourke stated there are 850 poles on the site.

Mr. Glennon replied as of this morning there are only 726 poles on the site.

Mr. Davis stated that is less than half of what was there last year.

Ms. Legro stated we really need to have the air sampling done sooner rather later.

Mr. Davis replied that I am respectfully suggesting that it would not serve any useful purpose other than be an expense to McFarland Cascade who is taking extraordinary steps to move their business out of Billerica. If something was detected what remedy are you going to have. McFarland is moving the business and the poles out of Town. I don't think it will be useful. The company will resist air sampling.

Mr. Reader asked Ms. Muñoz from a legal standpoint what would you recommend.

Ms. Muñoz replied that she could not give an opinion of what the Board should decide. I can just tell you legally what either ramification would be or how I think you should go about practically implementing it. If the Board decides to leave the order as is, the order states that air sampling should begin in May 2010, which means that technically the testing would start May 1st. I don't know how many poles would be gone by then and how skewed the results would be. If you don't want them to complete the testing then I recommend suspending the order and then either meet in June or have them report back to you in June. Those are the two options unless you want to issue a completely new order.

Mr. Kenyon asked how long it would take to issue a new order.

Ms. Muñoz replied you can issue a new order right away, but it is appealable. If you issue an order today it could be appealed within the next thirty (30) days. However an appeal delays the process.

Mrs. Giroux asked if we stay with the order that is currently in place what is the ramification if something is found or if something isn't found. Can they change their mind if they find there is no pollution? Can they reverse their decision and stay?

Ms. Muñoz replied right now they have offered to move the poles voluntarily there is nothing obligating them to do that.

Mrs. Giroux asked if the Board upholds the decision and goes forward with the air sampling and it does not come out the way the residents would like; the company has every right to stay.

Ms. Muñoz replied in her opinion yes.

Mr. Karamanian asked even though it has been detected to be five (5) times over the State limit?

Ms. Muñoz replied the Board can issue an order asking McFarland Cascade to leave, but that order has not been issued yet. If that order were to be issued McFarland Cascade can appeal it. Ms. Muñoz stated that she is not recommending either way.

Mrs. O'Rourke stated so if we don't suspend the order for air testing and we tell them they have to do it, they can appeal it.

Ms. Muñoz replied the order is technically in place. They can attempt to litigate over anything. They can file a lawsuit at anytime over anything and for any reason but whether or not that lawsuit would be successful is another story. Any lawsuit that is put in place they could ask for an injunction.

Mrs. Giroux asked if someone has any symptoms they can be treated by a physician without the air sampling test.

Ms. Muñoz replied that is outside of my realm of expertise. Ms. Muñoz stated those are the Boards legal options at this point.

Mrs. O'Rourke asked Mr. Berube for his final comment.

Mr. Berube explained that McFarland Cascade is volunteering to remove the poles and that should make a lot of people happy. They still have to do site remediation and that should eliminate any further traces of PCP by the time they conclude the site remediation. Hopefully, that will put an end to any exposure to PCP. If the Board tries to force McFarland Cascade to do the air sampling, as Mr. Davis has indicated McFarland Cascade would probably fight the Board and they could file an injunction against the Board and continue their operation. Where they have volunteered to leave, the best route to go is to suspend the order. We can always come back and revisit this situation. There is nothing that says we cannot take action in the future if there has not been an improvement in the conditions. If they cooperate and do the air sampling the results are going to be skewed because the poles are being relocated and we are not going to get the conditions that occurred in the past summer. I think if anyone is going to have medical testing done they find that they have PCP in their system. The air sampling isn't going to provide them with anything that is relevant.

Ms. Muñoz explained that there is nothing that can prevent the Board from coming back in the future and acting on a nuisance complaint from this site. If the poles are moved and one (1) year from now someone complains that a nuisance still exists with this site, the Board has the right according to Chapter 111 to investigate and issue a new order. By suspending this order you are not giving up any rights to move forward with other enforcement orders.

Mrs. O'Rourke asked for a motion to be made.

Mrs. Giroux made a motion to suspend the air sampling order unless McFarland Cascade chooses to go forward with the sampling order. Mrs. Giroux made a motion to continue with personal updates versus e-mail updates until all poles have been removed. Mrs. Giroux made a motion to continue the cleanup with status updates and site remediation. Mrs. Giroux made a motion that the Board will continue to oversee this property and stay in contact with Department of Environmental Protection (DEP) and follow the Massachusetts Contingency Plan (MCP). Mrs. Giroux made a motion that the Board inform all other Boards in Billerica of this issue to prevent a new neighbor from contributing to an already problem site. Mrs. Giroux made a motion that if the odor still persists and if there is no remediation from the odor that the air sampling be done in July 2010.

Mr. Kenyon seconded. So voted unanimously.

Mr. Davis asked if he could make a comment on one of the motions. Mr. Davis stated that no matter how rapidly the MCP process is done the remediation is not going to be done by July 2010. By the time the samples go to the laboratory and a Phase II report is written to DEP and DEP does a risk assessment that would be unrealistic. The goal is to have the process completed by October 2010 and that would be one (1) year from notification. I would request that the Board reconsider the last motion regarding that if the odor still persists in July 2010 that McFarland Cascade will have to do the air sampling test. I would suggest that if the odor persists and the poles are gone that the odor is coming

from some other industry or source. I don't think that McFarland Cascade should have to test if the poles are gone contingent on whether the remediation is done.

Mr. Kenyon asked wasn't a plan in place to have the remediation done by October 2010.

Mr. Davis replied the goal is October 2010.

Mr. Berube stated McFarland Cascade has to still continue to provide the Board with progress reports. That was issued under a separate order.

Mr. Davis replied that McFarland would continue to provide the Board with the progress reports.

Mrs. O'Rourke asked Mrs. Giroux if she would like to amend her motion.

Mrs. Giroux replied no.

Mrs. O'Rourke asked if someone would like to amend Mrs. Giroux motion.

Mr. Kenyon stated that he would like to amend Mrs. Giroux motion to follow the Response Action Plan and have the remediation done by October 2010 or sooner if possible.

Mr. Reader seconded. Three voted in favor and one vote abstained (Sandra Giroux).

Mrs. O'Rourke reiterated that the last motion would be amended to October 2010 instead of July 2010. Mrs. O'Rourke thanked everyone for coming.

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

The Board adjourned at 8:30 p.m.

Respectfully submitted,

Sandra Giroux
Secretary

Joanne M. White
Recording Clerk