

**BOARD OF HEALTH MINUTES
MAY 3, 2010**

Marie O'Rourke, Chair stated that the regular meeting would reconvene 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.

ACCEPTANCE OF MINUTES

Mrs. O'Rourke explained there are a couple of corrections that need to be made.

Mr. Kenyon made a motion to accept the Meeting Minutes of April 5, 2010 with corrections. Mrs. Giroux seconded. So voted unanimously.

BOARD OF HEALTH BUSINESS

Board of Health Meeting Start Time

Mr. Berube explained that at past Board of Health meetings the Board discussed changing the meeting time. Mr. Berube asked if the Board would like to change the meeting time to 6:30 p.m. or 7:00 p.m.?

A discussion was held regarding changing the meeting time.

Mrs. O'Rourke asked the Board Members to vote on changing the meeting time to 7:00 p.m. Mrs. Giroux and Mr. Kane were not in favor of changing the meeting time to 7:00 p.m.

Mr. Kane made a motion to change the meeting time from this point forward to 7:00 p.m. unless otherwise specified.

Mr. Reader seconded. Four voted in favor and one vote opposed (Sandra Giroux).

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 Water Conservation Committee voted unanimously to recommend to the Board of Selectmen the institution of the Water Ban, Level 2, for the coming summer season. The Board of Health also supported that decision. Mr. Kenyon explained that some residents are still wondering why there will be a water ban. The Town is still under the Department of Environmental Protection's (DEP) mandate to keep Billerica's water usage to 65 gallons per person per day. This mandate is to conserve water and it has nothing to do with the current water levels. It is the Town's goal to conserve water. DEP takes the water conservation efforts seriously when permits are up for renewal. John McGovern informed us that all town buildings now have water meters. He is working on getting meters installed at the last two (2) athletic fields. He also explained to the committee about a program to replace the water meters across town. Most existing home meters are about 20 years old and long out of warranty. Residential meters cost approximately 325 (three hundred twenty-five) dollars. The new meters will provide more accurate readings. Liana Measmer, Editor in Chief of the Billerica Green will publish her first article on Water Treatment and also a photo of the Water Ban Level 2 sign in the next issue of the Billerica Green. Mr. McGovern has contacted the sewer department and they are going to investigate why the sewer plant was inundated with water in the month of March. He seems to think that a lot of people may have their sump pumps connected into the sewer system, which is illegal. Liana is going to publish an article in the Billerica Green explaining that it is illegal to connect sump pumps into the sewer system.

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

Mr. Kane stated why is there a water ban when the goal is 65 gallons per person per day, which is about 2.6 million gallons but we are allowed to use about 6 million per day.

Mr. Kenyon explained the Town of Billerica is allowed to use 5.1 million gallons per day based on the season and that is an average.

Mrs. O'Rourke thanked Mr. Kenyon for the update.

Tobacco Control – New FDA Regulations

Mrs. O'Rourke stated the next item on the agenda is Tobacco Control new FDA regulations. Mrs. O'Rourke thanked Mr. Kane for sending the e-mail to all the Board Members.

Mr. Kane explained that the Board has a case that has been going on for over a year and a half with one of the tobacco establishments in Town. That establishment has a waiver allowing self-service

tobacco products at the mall. According to the State regulations that it is not allowed. There was a discussion with the Attorney General (AG) about our waiver still being valid. The FDA has come out with new regulations that go into effect on June 22, 2010, which prohibits self-service tobacco in anything but adult only establishments. The adult only definition is very strict, they check id's coming into the building and the threshold is very high. The Board has never heard back from the AG regarding the State regulation but at this point there is Federal regulations, which are very clear and self-service tobacco establishments are not allowed after June 22, 2010. The Board may want to revisit this case regarding the variance.

Mr. Berube replied that Health Agent, Angela Braun is present tonight to give a report.

Mrs. Braun explained that she has looked into the FDA regulations. The State has not given us any advice and interpretation. I consulted with Attorney DJ Wilson regarding tobacco control and he informed me that the State AG regulations are not as stringent because they include cigars. The Board can vote on getting rid of the variance at any time because when those regulations came out in 2004 the variance should have been voided at that time. Mrs. Braun asked the Board Members if they had any questions.

Mr. Berube stated that the Board can reconvene the hearing and vote to dissolve that variance. With the uncertainty of the mall we do not know what will happen to the tobacco shop. If the tobacco shop gets a new area in the mall then he would have to comply with the new standards and the variance would be void.

Mr. Kane stated that was the rationale that we used a year and a half ago. The Board did not think the establishment was going to be there much longer.

Mr. Berube replied that as far as Papa Gino's, Ma Dry Cleaners and the Mall News are concerned their future is still uncertain. There have been discussions about leases for the stores but nothing is concrete. If they are going to be part of the future of the mall, they will have new locations and will have to comply with the new standards.

Mrs. Giroux stated so if they don't move and everything stays the same they can go on indefinitely.

Mr. Berube replied we expected something to happen a lot sooner than this. The Board can revisit this case.

Mrs. Giroux stated that she would like to revisit this case because it has gone on longer than the Board expected.

Mrs. O'Rourke stated this issue can be discussed under Health Department Activity.

Health Department Activity Report

Mrs. O'Rourke stated the next item is the Health Department Activity Report.

Mr. Berube stated that Health Agent, Angela Braun is going to give a report of the Food Service Establishments.

Mrs. Braun explained that in March there were many flooding issues. It affected a few establishments. Stelio's did not get any water in their establishment however they were closed for 3 days because of the water in the parking lot. Jade Pacific, Angelina's and the Pongal Restaurant had a lot of water. All the establishments handled the water situation very professionally. Brick Kiln Plaza, 99 Chelmsford Road is still having a problem because the back wall was saturated with water. The wall was not sealed properly and the water was seeping in, that is being taken care of. There are several new establishments. The Golden Jade, 131 Boston Road, near Expresso Pizza, Liberty Bell will be replacing the Coffee Emporium, G'Vanni's will be G'Seppe's. The owner of G'Seppe's owns the building, He will be using the same staff and the same chef. There will be a new employee cafeteria on Rangeway Road at the Auto Auction. Tedeschi Foods on Bridle Road has been remodeled. The Parker School plans have been submitted to the Board of Health office for review. The 28 Restaurant known as Cui Long's Chinese Restaurant on Salem Road is closed. The owner wants to talk to me tomorrow; I think he is selling the place. We are having a compliance problem at Java's Brewin. Things are not going well and we may have to order an enforcement conference with special inspections. We are working on an order for an exterior grease trap at the Convenient Plaza. It is a very old plaza and does not have a grease trap. Kentucky Fried Chicken (KFC) is doing very well. The grease trap is being cleaned every other month and that is going well. Mrs. Braun explained that she is currently on a Food Code Review Committee with the State to review regulations to update the MA State Sanitary Code 590, Chapters 1 and 2. Rich and I just inspected the new gym (Fit Results) near Stromboli's. I am currently inspecting pools, camps, concession stands and canteen/ice cream trucks in Town. I have just completed inspecting all the school cafeterias except Shawsheen Tech. I have included a packet of information regarding the cigarette facts for the Board Members. There are a couple of things I would like to add to the regulations.

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

Mrs. Braun stated that she has included information regarding cigarette facts for the Town. There are a couple of things I would like to add to the regulations. I would like to ban e-cigarettes. As far as I know nobody in Town sells e-cigarettes.

Mrs. O'Rourke asked what are e-cigarettes.

Mrs. Braun explained it is an electronic device that is battery powered that heats the nicotine into a vapor. It is very addictive. I have also had a couple of complaints about smoking in bars with pipes.

Mr. Berube explained that the tobacco regulations are currently being revised. The proposed tobacco regulations will be presented at the special meeting on May 24, 2010 for the Board to adopt. There will also be other revised regulations

Mrs. O'Rourke asked if Health Agent, Phavy Pheng has an activity report.

Mr. Berube replied there are a few court cases that are currently pending. We filed a case with the Housing Court regarding 78 Pinedale Avenue. There will be a Show Cause Hearing in Lawrence on May 4, 2010 regarding the failing septic system. There are two ongoing hoarding cases. One on Hancock Street and the other one is on the Middlesex Turnpike. Both cases are so serious that we have issued orders for the occupants to vacate the premises. The occupant at Hancock Street has passed away and we are dealing with the next of kin and the attorney for the property. In the past month there have been twenty-three (23) illegal dumping cases at empty lots and residential properties. Fifteen (15) of those cases were taken care of on the Green Clean Up Day on May 1, 2010. The eight (8) remaining cases are pending. The property owners are still addressing the violations. There are two (2) outstanding noise complaints. One is on Progress Road. Some of the residents on Wildcrest Avenue, which abuts Progress Road, are complaining about the noise coming from the trucking facility for OfficeMax. The Police Chief and I will be meeting with Office Max management to discuss this matter. The other noise complaint is at 90 Salem Road, Seigel Egg regarding trucks idling overnight. I am currently working with the property manager to address that issue. There have been a few other minor nuisance complaints.

Mrs. O'Rourke asked about whooping cough outbreak at the Kennedy School.

Ms. White explained that Christine West, Public Health Nurse is aware of this situation.

Mr. Berube explained that Christine West, the Public Health Nurse is working on scheduling a seminar about Lyme Disease. There has been an increase in Lyme Disease in the last few years. Christine is looking into inviting Alfred DeMaria to speak on behalf of the Department of Public Health and give a presentation on Lyme Disease. Mr. Berube stated that there will be a few projects coming before the Board in the future. Graystone Estates formerly known as Capodilupo Estates on Gray Street will be coming before the Board at the June meeting. The new owners of Swanson Woods will be coming before the Board for a re-issuance of their project approvals. As you know Swanson Woods was Steve Dresser's project that went up for auction. The new Parker School project will also be coming before the Board.

Mr. Reader asked will they break ground for the new Parker School this year.

Mr. Berube replied that is the plan however they have not filed with the Board of Health yet but I expect it will happen soon. Mr. Berube explained that the Auto Auction will be coming before the Board as well. I have had several meetings with the proponents of the Auto Auction. The Auto Auction is located off Rangeway Road on Charter Way. They will occupy an existing building and clear a great deal of land for the parking lot. There will be a number of stormwater issues for the Board

to review. We will have to make sure their septic system is adequate. There will also be a food service cafeteria and a car wash located in the building.

Mrs. O'Rourke asked what was that building used for before.

Mr. Berube replied he did not know when it was last used or what it was used for. Another project that will be coming before us is a culvert replacement project with National Grid by Federal Street. The flooding of the easement prevented National Grid from maintaining some of their facilities. There is also a beaver issue there. It involves flood plain and wetlands and we have been working to manage all the issues. I have also been working on two parking lot projects and the stormwater management regulations. The parking lot projects are the Dunkin Donuts on Boston Road across the street from Friendly's and the other one is near AS&E on the Middlesex Turnpike. We are revising some of the Board of Health Regulations. The Chapters are 2, 3, 4 and 5. Chapter 2 is the Food Service Regulations. Chapter 3 is Public and Semi Public Swimming Pools and Massage Therapy Regulations. Chapter 4 is the Tobacco Control Regulations. Chapter 5 is the Flood Plain Regulations. We need to revise our current flood plain regulations so that we are in compliance with the National Flood Insurance Program (NFIP). FEMA will be issuing new maps in June. The reason for the special meeting is so that we will be in compliance with the NFIP. Mr. Berube explained that the owners of the mall are making an effort to fix the rest of the roof that has not been fixed. They are planning to demolish the interior portions of the mall that are vacant. They have submitted plans to the Building Inspector showing how they are going to create storefronts from K-Mart to the Burlington Coat Factory. Ma's Dry Cleaning, Mall News and Papa Gino's still do not know where they are going to be relocating to.

Mrs. O'Rourke asked the Board Members if they had any questions. Mrs. O'Rourke requested that a Health Department activity report be presented once a month.

Mrs. Giroux asked if they could talk about the self-serve tobacco control issue at Mall News. Mrs. Giroux stated that she does not understand why we are waiting any longer. We have held off long enough.

Mr. Berbue stated if the Board would like to reconvene the meeting he would schedule Mall News to be on the agenda at the June 2010 Board of Health Meeting.

Mrs. Giroux made a motion to reconvene the Mall News self-service tobacco case.

Mr. Kane seconded. So voted unanimously.

Breckenridge Estates

Mrs. O'Rourke stated the next item is Breckenridge Estates.

Mr. Berube explained that Breckenridge Estates is a new subdivision between Pinedale and Pinehurst Avenue.

Mrs. O'Rourke asked how many houses will be constructed.

Mr. Berube replied that it will be a nine (9) lot subdivision. There will be significant altering of this site. The site used to be a gravel pit and is currently being used by ATV's.

Mr. Kenyon asked is this subdivision going to be on town sewer.

Mr. Berube replied it will be on town sewer. Mr. Berube explained that as soon as the Health Department receives the Peer Engineering Report from our consulting engineer, Breckenridge Estates will be scheduled for the next available meeting.

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

The Board Members did not have any questions.

McFarland Cascade Progress Report

Mrs. O'Rourke stated the last item under Board of Health Business is the McFarland Cascade Progress Report.

Steve Glennon, representing McFarland Cascade identified himself. Mr. Glennon explained that a report was submitted on April 27, 2010 and at that time there were 493 poles remaining on the site. On April 12 and 13, 2010 GZA GEO Environmental Consultant did some drilling and site work for the Mass Contingency Plan. No data or reports have been received. A report will be provided to Richard Berube, Director of Public Health and DEP as soon as it is available. At this time there are 300 poles on site. McFarland Cascade is on target for all the poles to be removed by June 1, 2010.

7:45 p.m. Ronald Lerocque – 7 Ichabod Lane – Request a Variance for work within the Flood Plain and 25 feet of the Flood Plain

Mrs. O'Rourke stated the first hearing on the agenda is Ronald Lerocque, 7 Ichabod Lane, requesting a Variance for work within the Flood Plain and 25 feet of the Flood Plain.

Mr. Hannaford presented plans to the Board showing the proposed addition, detached garage and an upgrade to the existing septic system at 7 Ichabod Lane.

Jeff Hannaford, Norse Design Services, representing Ronald Lerocque the owner of 7 Ichabod Lane identified himself. Mr. Hannaford explained and pointed to the plans and the existing dwelling. The proposed addition will be constructed on the left side of the existing dwelling. That proposal

prompted an upgrade to the existing septic system, which is going to be done on the right side of the dwelling. The owner would also like to construct a detached garage on the left side. Based on the Green Engineering Flood Plain maps the elevation is 113. The site is higher in the front and slopes down towards the back. We are requesting to fill in a small portion of the Flood Plain, which will be compensated at equal or greater volume. Some altering was done when the road was constructed. The road is higher than the Flood Plain. According to the owners flooding has not occurred in this area.

Mrs. O'Rourke asked is the detached garage going to have a room above it.

Mr. Hannaford replied no.

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

Mr. Kenyon asked Mr. Hannaford to explain about the four-foot offset in order to eliminate a pump system.

Mr. Hannaford explained that the ground slopes and the system is going to be level at four (4) feet above the water table so at the high point, as you get to the other end it will probably be six (6) feet above the water table.

Mr. Reader asked Mr. Hannaford to explain the sewer and drain easement on the plans.

Mr. Hannaford explained that was part of the original subdivision. There is a drain-pipe that comes from the street and empties out there.

Mr. Berube explained that before this area was developed there were streams that flowed through this area. When this area was developed a lot of the streams were put into the drain easements. The streams have been put into culverts and channels within these drain easements. That is one of the reasons why I required them to come before the Board on this matter. The Flood Plain has been altered since the development. It shows the drainage patterns in the area and it is important that we maintain those easements and the remains of the Green Engineering Flood Plain so that there will not be any drainage problems down the road.

Mr. Hannaford explained that the pipes shown on the plans were constructed at the time of the subdivision as drainage channels to control the flow of the drainage. They are now considered to be intermittent streams.

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

Mr. Berube stated it is a good plan. They are providing compensation for what they are filling in relative to the septic system and there is no additional filling in of the Flood Plain that will cause drainage problems in that area.

Mrs. O'Rourke asked if any abutters were present. No abutters were present.

Mrs. Giroux made a motion to grant a variance of Board of Health Rules and Regulations, Chapter 5, Section 5.5.005 (1) (2) in order to construct an addition a detached garage and a septic system within one hundred (100) feet of flood plain and within the flood plain at 7 Ichabod Lane 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 construct an addition to the existing dwelling and a detached garage within thirty-four (34) feet and three (3) feet respectively of the Green Engineering Flood Plain. Furthermore, the applicant proposes to upgrade the existing septic system that serves the dwelling.
- 3) The finish grading for the soil absorption system will encroach upon the flood plain. A small amount of grading is proposed in the rear yard behind the above ground pool to provide compensatory flood storage for the filling of the flood plain. There will be no other filling of the flood plain. The site does not fall within the FEMA 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 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 Norse Design Services, Inc. dated January 27, 2010 and revised to April 28, 2010 and stamped by Christine A. Chisholm, RS#1235.
- 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.

Mr. Kenyon seconded. So voted unanimously.

7:55 p.m. Arthur Erickson – 18 Brookdale Circle – Request a Waiver of Regulations for work within the Flood Plain

Mrs. O'Rourke stated the next hearing is Arthur Erickson, 18 Brookdale Circle requesting a Waiver of Regulations for work within the Flood Plain.

Mr. Smith presented plans to the Board for a new septic system at 18 Brookdale Circle.

Doug Smith, Soilsmith Designs, representing Arthur Erickson identified himself. Mr. Smith explained that Mr. Erickson needs a new septic system because the current system failed the Title 5 Inspection. The entire property is in the Green Engineering Flood Plain. The FEMA elevation is 109. The existing home was built in 1971. The existing septic system is located in the back yard and there is no other place to put it. I met with the Conservation Commission and they approved the wetland and the setbacks. I am looking for this Board to approve a waiver for work in the Flood Plain.

Mr. Kenyon asked is there any flooding in that area.

Mr. Smith replied no. Mr. Smith explained that when we did the soil testing we could see different layers but that was twenty (20) feet from the system. We are going to construct a retaining wall and install a silt fence.

Mrs. O'Rourke asked if that area would be on the next sewer contract.

Mr. Berube replied no. The Board granted a similar approval for the property located at 7 Brookdale Circle. The property was mostly in the flood plain and the septic system was failing and there was no place to put it.

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

The Board Members did not have any questions.

Mr. Berube stated that the work is necessary to correct the failing septic system. I recommend approving the Waiver of Regulations because it is the best location for the septic system and the retaining wall will limit the disturbance to the area and also prevent any further filling of the Flood Plain.

Mr. Reader made a motion to grant a waiver of Billerica Health Regulations, Chapter 5, Section 5.5.005 (1) to allow the upgrade of a failing septic system in the flood plain located at 18 Brookdale Circle 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 work proposed by the applicant will upgrade an existing septic system found to be in non-compliance with the provisions of 310CMR15.000, the State Environmental Code, Title 5.

- 3) The work is necessary to correct the system failure and protect the public health, safety and the environment.
- 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, 3, 4, 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 Soilsmith Designs, dated November 6, 2009, revised to April 29, 2010 and stamped by Douglas J. Smith RS# 1155.

Mr. Kenyon seconded. So voted unanimously.

8:00 p.m. Ashraf Dahod – Rangeway Road – Proposed Cemetery Plan

Mrs. O'Rourke stated the last item on the agenda is the Proposed Cemetery on Rangeway Road.

Attorney Lentine presented a concept plan for the proposed cemetery to the Board.

Attorney Stephen Lentine 409 Boston Road, Billerica identified himself. Attorney Lentine explained that he was representing Ashraf Dahod who could not be present but his wife Mrs. Dahod is present. They are the primary benefactors of the Anjuman-E-Ezzi Masjid Mosque on Rangeway Road. They are negotiating the purchase of a 16.7-acre parcel on Rangeway Road. Primarily the site is wetlands and flood plain. Only 1.5 acres of that land can be used. They would like to use the 1.5 acres for cemetery purposes. The site has been previously approved for one single family home. Currently there is an order of conditions from the Conservation Commission and a variance from the Board of Appeal. The variance from the Board of Appeal has expired. The current owner of this land has financial problems. This piece of property and his condo on Rangeway Road are being foreclosed upon. The proposal is to use the land for a two hundred twenty two (222) privately run Muslim cemetery for the Mosque. The reason we are here tonight is because the Massachusetts General Laws Chapter 114, Section 34 requires the approval of the Board of Health at a Notice Public Hearing before Town Meeting can approve the site for cemetery use whether it would be for public or private use. The Board of Health would have to report in writing to Town Meeting its approval in order for us to go forward with Warrant Article 30. Article 30 will be the second order of business at Town Meeting on May 11, 2010. Aside from the approval of this Board and the approval of Town Meeting, the Billerica Zoning By-Laws requires us to go before the Zoning Board of Appeal for a special permit as long as the Board of Health and Town Meeting approves the project. Then there will be another Notice Public Hearing where the abutters will be invited to attend. The order of conditions that is on the site is still valid for the single-

family home from the Conservation Commission. That order of conditions will have to be modified or Fisheries and Wildlife with regard to the site. Some blue spotted salamanders were found on the site. They have already approved the site for a single-family home on this footprint so the salamanders should not be a problem. There will be a storage building on the site. The site will have a private septic system and a private well to serve the storage facility. The Muslim tradition is that burials are green which means that they don't embalm. There are no cremations. The body would be treated at the Mosque. It would be cleansed and washed and put into a casket. There would be a vault at the cemetery. All Board of Health, State and local regulations are followed. The service is at the Mosque. The burial service is limited to a small group of males. Women are not allowed to attend burials in the Muslim tradition. The Muslim tradition is that the body is buried within twenty-four (24) hours of death. We think this is a positive thing for the Town. This will relieve the burden on Fox Hill Cemetery. The body has to be buried facing Mecca. There will not be any headstones; only flat grave markers will be used. We have already gone before the Finance Committee and they have approved the project subject to the Board of Health's approval. We had a neighborhood meeting and the neighbors had a lot of engineering questions. I told them to save their questions for this meeting when the engineer, Joel Williams would be present. The driveway will be a gravel driveway and will have less impact on runoff issues. We have agreed to keep as many of the trees as possible around the perimeter of the site. There is one neighbor Mrs. Cook that has a problem with the overlap of her driveway. We will grant her an easement. The neighbors asked if we would gate the driveway and we have agreed to that. Attorney Lentine asked the Board if they have any questions.

Mrs. O'Rourke asked if the Board of Health and Town Meeting approve this project will the property be purchased after the approval.

Attorney Lentine replied there are three (3) options to purchasing the property. We can get an assignment of the mortgage from the mortgage holder, and negotiate a deed in lieu of foreclosure with the current owners or we can conduct a foreclosure sale on our own. We could get a P&S from the current owners subject to a reasonable payoff. Or we could go to the foreclosure auction and bid on the property.

Mrs. O'Rourke asked if the approvals are given and the sale of the land goes through does this project have to come before the Board of Health again.

Attorney Lentine replied he did not think so.

Mr. Berube clarified that what the Board will be approving tonight is a concept plan not a definitive plan. If the approval is given there could be some slight alterations to this plan. The applicant will go before the Board of Appeal and the Conservation Commission before they come back before the Board of Health for a site plan review. The applicant will also have to go before the State for the Massachusetts Environmental Policy Act (MEPA) because this particular site is the site of the blue spotted salamanders. This plan could change.

Attorney Lentine explained we are looking for approval from the Board of Health to allow the land to be used for a cemetery site and that is what Town Meeting will be voting on.

Mrs. O'Rourke asked will a variance from the Board of Health be needed.

Mr. Williams replied I don't think any variances from the Board of Health would be required. An Administrative Determination of Applicability may be needed relative to working within one hundred (100) feet of Flood Plain. There is a fifty (50) foot no disturb wetland offset that falls where the proposed driveway would be located which is over the twenty-five (25) foot offset that the Board would allow the Director, Richard Berube to issue an Administrative Determination for. The Director would have to review an Administrative Determination of Applicability relative to any septic plan in or within the flood plain.

Mr. Berube explained that the new stormwater regulations were adopted by the Board, which would require the applicant to come before the Board for a hearing.

Attorney Lentine replied that we will do whatever the Board of Health wants us to do.

Mr. Kenyon stated that according to the Mass By-Laws cemeteries cannot be built near any drinkable water. You mentioned that you were going to have a well installed. What will the well be used for?

Attorney Lentine explained there will be a septic system that will need some water source. The well will be used for landscaping maintenance. If that is an issue and the well is not going to be allowed there is a water line on Rangeway Road that we can connect to.

Mr. Berube explained that when those laws were enacted it was back in the 1800's and there were concerns about the threat to public drinking water supplies. The embalming process posed a threat to drinking water supplies. Arsenic was the main ingredient up until the beginning of the 20th century. Today there is a different set of standards and the embalming process has changed. I had a lengthy discussion with DEP and they don't consider this to have an impact on our drinking water supplies. Our drinking water supply comes from the Concord River and is treated at the Water Treatment Plant.

Mr. Kenyon asked if someone goes to visit a grave and wants to get a drink of water from the well would it be safe.

Mr. Berube explained that there will be some setback requirements if they want to install a private drinking well or the Board could make it a condition that they have to connect to town water.

Attorney Lentine replied that we are willing to do it either way. We were trying to make it more beneficial than using town water but we can bring the town water up to this property. That is not a major issue.

Mr. Kane stated that he is concerned with the care and perpetuity being funded adequately. What is the funding timeline to support the purchase of the property as well as the care of the two hundred twenty-two (222) gravesites?

Attorney Lentine replied the timeline is fifty (50) years. Given the size of the Mosque, which is 250 to 300 members. They are looking at relatively young group.

Mr. Kenyon asked will this cemetery be used just for this Mosque.

Attorney Lentine replied yes, the cemetery will be used just for this Mosque.

Mrs. Giroux stated that she is confused about the embalming process because the Massachusetts Law states that a body has to be embalmed. Do they use caskets?

Attorney Lentine explained they do use caskets and there is a burial vault.

Mrs. Giroux stated when she read about green burials online it stated that no concrete vault is used.

Attorney Lentine explained that different sects have different traditions. With the green burial there is no embalming but the bodies are put in a casket and the casket is put in a vault. The Muslims use a thin casket inside a vault. I don't think in Massachusetts you can carry on the other Muslim tradition. A burial permit will be required by the Board of Health and supervised by a licensed funeral director.

Mrs. Giroux asked can you explain what happens at the cemetery burial.

Mrs. Dahod explained that our goal is to bury the body as soon as the first sundown. After the body is washed with water and wrapped in white cotton cloth it is brought to the Mosque by the hearse. We have our last final prayers. Then the body is taken to the cemetery and usually the men of the deceased family and some close men friends go and bury the body. There is no ceremony at the cemetery. Flowers are left at the gravesite.

Mrs. O'Rourke asked when the body is buried facing Mecca is the body placed on its side.

Mrs. Dahod explained that usually the body is placed on its side with the tip of the nose touching the ground facing Mecca.

Attorney Lentine stated that there are different sects and there are different traditions. However they will still be governed by the State and Local Board of Health regulations.

Mr. Reader asked can other mosques request that their people be buried at this cemetery.

Mrs. Dahod replied they can request to be buried here but as you find with the different sects they do their burials very differently. There are other Muslim cemeteries in Canton and on the south shore. Our sect (Shi'ite) is very small and there are only 1.2 million people all over the world. We are not a very big sect. Right now our sect has only 220 young members. This area that we are going to use as a cemetery will take us a long time to be used up. Usually people go to their own mosque and their own sect for burial. There may be unexpected circumstances when someone is visiting from out of town and unexpectedly dies. Generally it is just for the members of our sect.

Mrs. O'Rourke asked do they have to pay for the plot.

Mrs. Dahod replied yes they have to purchase the plot.

Mrs. Giroux asked what happens if you cannot bury before sundown.

Mrs. Dahod explained if it is not possible then we use the storage room. It is like a funeral home setting with refrigeration. Whatever the State law requirements are we will follow. Mrs. Dahod explained when the body is lowered it is lowered by union contracted burial people. We do not lower or bury the body.

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

Mr. Berube stated that he does not see any initial problem with this concept plan. If the Board approves the project they will have to state the conditions. They should be connected to town water. They will have to come back before the Board for a Stormwater Management Permit and Site Plan approval. The septic system design will need to be reviewed. The Funeral Director will have to be permitted by the Board of Health. There are a number of items that will have to be reviewed by the Board of Health. This is just a concept plan.

Mrs. Giroux asked can we make a motion to accept the concept not the plan.

Mr. Berube replied this is not a definitive plan. It will be clearly stated that the Board accepts the concept.

Attorney Lentine explained that the statue reflects that this vote would be to approve this land to be used as a cemetery. The statue states that "No land shall be used for burial until such permission is given by Town Meeting but no such permission shall be given until the location of the land intended for such use has been approved in writing by the Board of Health. Tonight the Board is voting just to approve this location for a cemetery.

Mrs. O'Rourke asked if anyone in the audience has any questions.

Jack McCarthy, 62 Rangeway Road identified himself. Mr. McCarthy commented that he does not want this Board to be swayed into thinking that Fox Hill cemetery will get a relief because there are

only 200 residents in Billerica that are members of the Mosque. Do we know what the level of the water table is? I understand that a body must be buried six (6) feet deep and the water table must be a minimum of two (2) feet below that. Is there an eight (8) foot offset of the water table on that property?

Mr. Williams replied some test pits have been done on this site a few years ago when the parcel was going to be a residential subdivision. We were anticipating septic systems for all the house lots. The proposed house was going to be on septic. The groundwater in that area is 3-4 feet below grade.

Mr. McCarthy stated that by approving this cemetery the property will be taken off the tax roll because the site will not be taxable property. Mr. McCarthy asked Mr. Williams to explain the proposed plan for the septic system.

Mr. Williams explained that the septic system because of Title 5 requirements has to be four (4) feet above groundwater. If the groundwater is four (4) feet below grade the bottom of the leaching system will be at ground level which means the septic system will be a raised system. Mr. Williams explained that he went online and could not find anything that states that the graves have to be six (6) feet deep. I looked on the State website and could not find anything documented about how deep graves have to be buried.

Mr. Berube stated that if the Board of Health and Town Meeting approve the land for the cemetery use we would have to review the buoyancy of the burial vaults. They may have to raise that area in order to use the site as a burial site.

Mr. Kane asked what is the groundwater level.

Mr. Williams replied it varies in this area of the proposed cemetery from 3 to 4 feet below grade.

Helen McCarthy, 62 Rangeway Road identified herself. Mrs. McCarthy asked Mr. Williams if he could explain what you mean 2 to 4 feet at grade level. Is grade level the surface of the ground?

Mr. Williams replied yes.

Mrs. McCarthy asked does that mean that the ground water only goes down 2-4 feet.

Mr. Williams explained that when we talk about ground water level we are looking at mottling. Mottling is splotches of color that is in the soil. The color in the soil would be higher than what you would observe from water sitting in the hole. Mr. Williams explained how test pits were done. In the spring you could dig and observe where you would see water seeping in the test pit and where you see water sitting in the test hole. Mr. Williams explained how a dry or wet spring affects the mottling and test pits. The State changed that and you can now determine the ground water by mottling. The mottling itself being a long-term average tends to be higher than what you will observe in a test pit hole.

Mrs. McCarthy stated so in order to meet the requirements is the mottling considered the high water mark.

Mr. Williams replied yes.

Dan Lewis, 70 Rangeway Road identified himself. Mr. Louis asked Mr. Williams if the water is only two (2) feet below ground would the vault be in the water.

Mr. Williams explained the groundwater in this area is from 3 to 4 feet below the ground level. We would try not to put the vault in the ground water.

Mr. Lewis asked is it possible that the vault would be buried in the water.

Mr. Williams replied hopefully not.

Mr. Lewis stated that his concern is that this is a private cemetery what happens if the Mosque does not survive and the cemetery has to close. What will happen to the property? Who will maintain the cemetery? Is there a trust in place to maintain the property?

Attorney Lentine explained a private non-profit corporation would run the cemetery. That non-profit corporation has to meet certain requirements with the Attorney General's office. All the cemeteries are run under the same restrictions and regulations and are subject to the State and local Board of Health regulations.

Mr. Kane asked do you know what the Attorney General's (AG) requirements are.

Attorney Lentine replied the AG supervises all non-profit corporations in the Commonwealth of Massachusetts. The AG audits their accounts on an annual basis. The AG can go after all non-profit corporations that do not do the annual filing with them.

Mr. Kane stated that if this cemetery only has a small budget for funding how long can the property be maintained. I would like to know what the rules are regarding maintaining the cemetery.

Attorney Lentine stated a cemetery is going to be treated differently than any typical non-profit corporation. Private cemeteries are treated differently by the AG's office. This isn't unique to this Mosque. We have churches and synagogues all over the Commonwealth that maintain their own cemeteries in the same fashion that this Mosque is trying to do. The Mosque is going to be under the same level of scrutiny as any other cemetery.

Mr. Kane asked at what level is the funding of this trust able to maintain this property.

Mr. Lewis asked regardless of the standards can you prove that there will be sustainability for the Town.

Attorney Lentine replied what is being asked tonight and at Town Meeting is to approve this land as a site for a cemetery. Once the land is approved then we will have to follow the next steps and have the land approved by the Zoning Board of Appeal and the State's AG office and then other requirements will have to be met. The question that is being asked tonight is this an appropriate site for a cemetery.

Mr. Lewis asked since the vaults could be put in ground water what will it do to the surrounding environment and any neighbors who are on well water.

Attorney Lentine replied that those questions will be governed by the local Board of Health and the State's regulations with regard to burial. If the land has to be built up then it will be built up before a burial can take place. If the State's requirements are that the bodies have to be buried so many feet above the ground water then we will have to bring in fill in order to accommodate that and that is what we will do.

Mr. Berube stated that the Board of Health will have to consider the buoyancy of the burial vaults and that would have to be addressed. This is just a concept plan. If the Board and Town Meeting approves the concept plan then those problems will be addressed when they go through the site plan review. They may have to raise the existing drains in order to accommodate the cemetery.

Mr. Lewis asked will the Conservation Commission be there.

Mr. Berube replied they will have to go before the Conservation Commission. Mr. Berube stated when this land was approved for the single-family dwelling a large portion of the property was going to be deeded as conservation land. Mr. Berube asked Attorney Lentine if that is still going to occur.

Attorney Lentine replied yes there will still be a conservation restriction.

Mr. Kenyon asked could that end the project.

Attorney Lentine replied no we anticipated that there would be a conservation restriction because of the blue spotted salamanders. Attorney Lentine explained about the land and the wetlands.

Mrs. O'Rourke asked if Town Meeting does not approve the land for the project that will be the end of it.

Attorney Lentine replied yes. The most you can do with that site is construct a single-family home. As for the property being taken off the tax roll that was discussed at the Finance Committee's meeting and a single-family home is more of a tax burden than the income that it generates because of the expense of the children that have to be educated in the Billerica School system.

Mr. Berube stated whether or not it comes off the tax roll is not a matter for the Board of Health. We are only concerned with the environmental impact.

Mrs. McCarthy asked if they have to build up the site where will the runoff go. The runoff would go into the pond and into my backyard and my neighbor's backyard.

Mr. Williams replied that would be true if that surface was 100% impervious and paved over. Most of the area will be grass. There is no impervious surface other than the walkway in between the gravesites. The runoff will go straight down.

Mr. Berube explained all stormwater runoff would have to be addressed before this Board.

Attorney Lentine explained that stormwater runoff is a by-law in Billerica that is very specific. The rate of runoff post development of any site cannot exceed the rate of runoff pre development.

Josh Raymond 50 Rangeway Road identified himself. Mr. Raymond asked Mr. Williams when was the perc test done on this property.

Mr. Williams replied that he did not know the exact date but he could check his records.

Mr. Berube explained that the Board of Health was out there when the residential subdivision was proposed and then again when the single-family dwelling was proposed.

Mr. Raymond asked is there a record of the soil conditions.

Mr. Williams replied yes.

Mr. Raymond asked where could he find the records of the perc test.

Mr. Berube replied that he could come to the Board of Health office and review the records.

Mrs. O'Rourke asked if anyone else in the audience would like to ask a question. No one had any further questions. Mrs. O'Rourke asked Mr. Berube for his comments.

Mr. Berube explained that the biggest impact would be to our water supply. I had a discussion with DEP and they informed me that it would not pose a threat to our water supply. It is only a concept plan not a definitive plan. If the Board and Town Meeting approve the concept the applicant will have to come before the Board. Then the Board can specify the conditions.

Mr. Reader stated the motion is just to approve the land for use of the cemetery. The Board is not going to apply any conditions at this time.

Mr. Berube stated it is within the right of the Board to add conditions if they want.

Attorney Lentine explained that the State's Statue requires a vote for the approval of the land.

Mrs. Giroux made a motion to accept this as a concept plan only to go before Town Meeting. This by no means supports an approval for the actual plan which must come back before the Board of Health for approval.

Attorney Lentine stated that he is concerned because the State's Statue is for the approval of the land not a plan or a concept.

Mr. Berube suggested that the Board could make a motion that approval of the site as presented in the concept plan subject to further review and approval by the Board of Health.

A discussion was held on the concept plan and the approval of the land for cemetery use.

Mrs. Giroux withdrew her motion.

Mr. Berube asked is this the plan you are going to present at Town Meeting.

Attorney Lentine replied yes and that Town Meeting will be voting to approve the land for use as a cemetery.

Mr. Kenyon read the Massachusetts General Law, Chapter 114 Section 35.

Mr. Berube stated that the Board could make reference to this concept plan.

Mr. Kenyon made a motion to approve the use of this parcel of land on Rangeway Road for the use of a cemetery pursuant to Massachusetts General Law Chapter 114 Section 35 subject to the later approval of the plan before the Zoning Board of Appeal, Conservation Commission and the Board of Health.

Mr. Reader seconded. Four voted in favor and one vote opposed (Sandra Giroux).

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

The Board adjourned at 9:15 p.m.

Respectfully submitted,

Sandra Giroux
Secretary

Joanne M. White
Recording Clerk