

**BOARD OF HEALTH MINUTES  
JUNE 7, 2010**

Marie O'Rourke, Chair called the meeting to order at 7:15 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**

Mr. Kenyon made a motion to accept the Meeting Minutes of May 3, 2010.  
Mrs. Giroux seconded. So voted unanimously.

Mrs. Giroux made a motion to accept the Executive Session Minutes of May 3, 2010.  
Mr. Kane seconded. So voted unanimously.

Mr. Reader made a motion to accept the Minutes of the Special Meeting of May 24, 2010.  
Mr. Kenyon seconded. Three voted in favor and two abstained (Sandra Giroux and Dan Kane).

**CORRESPONDENCE**

**Department of Veteran's Services – Flag Day**

Mr. Berube explained that the Department of Veterans' Services is inviting everyone to attend their Annual Flag Day Ceremony on Monday, June 14, 2010 on the Billerica Common at 9:00 a.m.

Mrs. O'Rourke explained that students from the Hajjar and Kennedy Schools will be in attendance. The Middle School Band will provide the music. The guest speaker for this event will be John Hodge from FLIR Systems. Everyone is welcome to attend.

**Massachusetts Department of Public Health Recognition**

Mr. Berube explained that the Billerica Board of Health received a Certificate of Appreciation from John Auerbach, Massachusetts Commissioner of Public Health thanking us for our contributions and participation in and managing immunization clinics during the 2009-2010 H1N1 response campaign.

**BOARD OF HEALTH BUSINESS**

**Health Department Activity Report**

Mrs. O'Rourke stated the first item under Board of Health Business is the Health Department Activity Report.

Mr. Berube stated that Health Agent, Angela Braun is present tonight to report on her activities.

Mrs. Braun explained that in the month of May she conducted forty-seven (47) Food Establishment inspections and 9 Mobile Food inspections. Currently there are five (5) late food establishment renewals. A late notice has been sent out. There were four (4) food establishment complaints and two nuisance complaints. Wendy's had two complaints, Friendly's had one and Milano House of Pizza had one. The first nuisance complaint was at Parlmont Park because of the dust from the pool renovations and second was the porta potties at the baseball fields. I conducted nine (9) pool inspections with seven (7) follow-ups. All the seasonal pools are open except for Parlmont Park because of the pool renovations. Angelina's in Pinehurst is closed because it was seized due to non-payment of meals tax. Naked Fish is going to close at the end of June and will be opening as a Fine Latin Cuisine Restaurant called La Casa De Pedro. The new owner is Pedro Alarcon and he owns another establishment in Watertown, MA. Nortel Networks on Technology Park Drive will be called AVAYA. I conducted a pre-op inspection at the Liberty Bell on June 7, 2010 and they plan on opening around June 21<sup>st</sup>. Golden Jade at 131 Boston Road should be opening soon. We will be inspecting and reviewing the summer camps. Mrs. Braun explained that she has completed and approved the plan review for the New Parker School cafeteria. Mrs. Braun asked if any of the Board Members had any questions.

Mrs. O'Rourke asked what the food complaints were about.

Ms. Braun explained that the complaint at Milano's House of Pizza was for not using gloves (bare hand contact). I went there at lunchtime and talked to them. The same problem occurred at Friendly's, I went there and talked to them and issued them a one hundred (100) dollar ticket. At Wendy's the complaint was for raw chicken burgers.

Mr. Berube explained that Christine West, the Public Health Nurse has provided the Board with a copy of her monthly update. There is a limited supply of the Shingles Vaccine left. If any seniors would like to receive the vaccine please contact the Public Health Nurse at 978-671-0932. Christine is

continuing to do all Communicable Disease Reporting, TB testing, cases of Salmonella, Campylobacter, Group A Strep, Pertussis, Lyme Disease, and all other vaccines on a monthly basis (i.e. MMR, Hepatitis A, B, Pneumonia, Gardasil, Td, Tdap, etc.). Christine is also working with Emergency Preparedness Planning for the Northeast Regional Coalition. Christine West and Health Agents, Angela Braun and Phavy Pheng will be conducting summer camp inspections for the Town.

Mrs. O'Rourke asked where are the camps located.

Mrs. Braun explained the Boys and Girls Club, Skyhawks Camp is near the Boys and Girls Club, Flip City is on Cook Street, All Pro Basketball is at the High School and Thundercats is at the Marshall Middle School.

Mrs. O'Rourke asked what kind of activities go on at Flip City.

Mrs. Braun replied they do gymnastics, tumbling and go on field trips.

Mr. Berube explained that there are a number of ongoing complaint investigations. A Housing Court Hearing for the failing septic system at 78 Pinedale Avenue has been continued to June 15, 2010. Breckenridge Estates will be coming before the Board and we have been working with them to see if they can provide sewer easements in that area so that some of the residents on Pinedale Avenue will be able to connect to town sewer.

Mr. Reader asked how big is that subdivision going to be.

Mr. Berube replied the proposal is for a nine (9) lot subdivision. Mr. Berube explained that there is a hoarding case on the Middlesex Turnpike that we are having a difficult time with the owner. We met with his attorney on June 7, 2010 and the owner wants to go back and live in his house. There is an oil spill in the basement, which is being addressed by DEP. The place looks like it is ready to fall down.

Mrs. O'Rourke asked where is the owner living.

Mr. Berube replied he was living with his daughter but the daughter just kicked him out. He has not made as much progress with the cleanup as he should have by now.

Mrs. O'Rourke asked where is he living now.

Mr. Berube replied I do not know but I think elder services is helping him. There have been eleven (11) new cases of illegal dumping. All the owners have been notified to clean up their property. Illegal dumping complaints are ongoing. We had one complaint about livestock in a residential neighborhood. There have been a couple complaints about the dumpsters at the Hess Gas Station and Rite Aid being emptied between (3 a.m. and 5 a.m.). We notified those businesses and we advised the people who have complained to notify the Police when the problem occurs so that the Police can take some action. There is a complaint about an abandoned property at 17 Perrault Street. The complainant

indicated that illegal activity was going on. When we checked out the property everything seemed to be secured. We did not receive a report from the Police Department. Abandon properties are a growing problem.

Mrs. O'Rourke asked does the Building Department get involved with abandon properties.

Mr. Berube replied we have worked jointly with the Building Department on a few cases. More houses are being foreclosed because people are losing their jobs and cannot afford the payments so they just pack up and leave. The properties are not being taken care of and sometimes the houses get broken into. Sometimes it is very difficult to find who is responsible for the property. Sometimes the Bank is not aware of the properties they own.

Mr. Reader stated the mortgage company or the bank should be responsible for the up keep of the property.

Mr. Berube explained that sometimes it is difficult finding out who the owner is. The mortgage company or the bank is not aware of what they own or what might have transferred out of their hands. There is no trail to follow. There were two sewage odor complaints. One complaint was at 23 Grandview Road but that area has town sewer so we are working with the sewer department to make sure there are no leaks in the sewer line. I think it might be an isolated incident related to the March rains as we have not detected anything since then. Some water sampling was done and nothing was detected. We are in the process of completing the permit renewals for all the Food Service Establishments for FY11. One issue that has come up is that the permit renewals for the non-profit, charitable organizations and concession stands are always late. The Board has a policy of waiving the permit fees for these organizations. Every year these organizations submit their renewal applications late. Health Agent, Angela Braun has to do the inspections after normal work hours or on Saturdays. We should not have to expend the extra time and effort to chase after these organizations since we are not charging them a fee. I suggest that the Board change the policy that if the non-profit, charitable organizations or concession stands do not file their applications on time they should be penalized and charged a fee.

Mrs. O'Rourke agreed with the Director. The Health Department should not have to put up with that. Mrs. O'Rourke asked the Board Members for their opinion.

Mr. Berube asked that a motion be made that if the non-profit, charitable organizations or concession stands are late a fee can be charged.

Mrs. O'Rourke asked what fee do you think is appropriate.

Mr. Berube replied the fee would be in accordance with our current fee schedule.

Mrs. Giroux made a motion that if the non-profit organizations do not submit their renewal application on time they will be charged a fee in accordance with the current Board of Health fee schedule as though they were not a non-profit organization.

Mr. Kenyon seconded. So voted unanimously.

Mrs. Giroux asked if Mr. Berube could send a letter to all the non-profit organizations informing them of the change that will go into effect.

Mr. Berube explained that we are working on some more regulation changes. We are reviewing our grease trap regulations, tobacco regulations, private wells and also bio-tech regulations. We have bio-tech regulations that have been in place for some time. Bio-tech is a growing industry and it makes sense to review our regulations and update them so that we stay current.

### **McFarland Cascade Progress Report**

Mrs. O'Rourke stated the next item is McFarland Cascade Progress Report.

Mr. Berube explained that Mr. Fitzgerald submitted the progress report for the month of May 2010. All of the new poles have been removed from the yard. McFarland has begun to remove the bunk material. Mr. Berube gave the Board Members pictures of the bunk material to review and explained the pictures show where the poles were stored and the bunk material they were getting rid of.

Mr. Kenyon asked if there have been any complaints.

Mr. Berube replied no.

Mrs. O'Rourke stated that she received a call from Carole Legro thanking the Board for pursuing the removal of the poles. Carole told me that it was the first time in ages that she could finally open her windows, smell the cutting of grass and the pine trees. She stated that in the past she called to complain and now she was calling to say something nice.

Mr. Berube explained that McFarland Cascade is proceeding with the Phase 2 investigation of cleaning up as part of the Mass Contingency Program. They have installed monitoring wells. In the future we will receive a report on the Phase 2 work.

### **Iron Horse Park Superfund Site Update**

Mrs. O'Rourke stated the next item on the agenda is the Iron Horse Park Superfund Site Update.

Mr. Berube explained that included in the Board's package is a copy of the Iron Horse Park Superfund Site power point presentation that was presented by Don McElroy from the EPA at the Selectmen's Meeting. There are seven (7) areas of concern. They are working on the design for six (6)

of those areas. They are constructing one of those areas in 2010. The proposal is to have the cleanup completed by 2013. In July 2010 there will be a public hearing regarding the asbestos testing that was done in 2009. As you recall the Board of Health assisted them in the asbestos testing in the surrounding neighborhood of Iron Horse Park.

Mr. Kenyon asked why has it taken from 1980 when it was declared a superfund site to start the cleanup process.

Mr. Berube replied that they probably have a number of sites that they are dealing with and they probably only have a certain number of personnel to do the work.

Mr. Reader asked when will this work start or is it going to start in September 2010.

Mr. Berube replied what work are you referring to.

Mr. Reader stated the 2010 cleanup plan for the groundwater, surface water and sediment.

Mr. Berube replied they are currently doing the testing. There are seven (7) areas and they are going to construct one (1) of the areas this year and design six (6) others. If you look at the Site Map you can see that the work at the Shaffier Landfill and the B&M Lagoons has been completed and everything else needs to be addressed.

Mr. Reader asked if the asbestos lagoons have been capped.

Mr. Berube replied no, they did some work in the past but additional work needs to be done.

Mrs. O'Rourke asked the Board Members if they had any questions about Iron Horse Park.

The Board Members did not have any questions.

### **Mosquito Control Project Update**

Mrs. O'Rourke stated the next item is Mosquito Control Project Update.

Mr. Berube explained that with all the rain that we received this past spring the mosquito season started early. If any residents have issues with mosquitoes they can contact Mosquito Control and have their property sprayed. Mosquito Control has provided a list of dates that they will be spraying in Town. They can also contact the Board of Health office for the phone number or the website.

Mr. Reader asked Mr. Berube if he has heard that there is an increase in the tick population.

Mr. Berube replied that he could find out if that is true.

Mr. Reader asked does spraying for mosquitoes have an effect on the tick population.

Mr. Berube replied no, the spraying only affects the mosquitoes. Christine West is working on scheduling a seminar on Lyme Disease especially with the growing tick population. Lyme Disease is a concern with many people.

Mr. Reader asked has the Health Department been notified of any Lyme Disease cases in Billerica.

Mr. Berube replied yes we are notified if there are any Lyme Disease cases.

Mr. Reader asked have there been any cases reported this year.

Mr. Berube replied that Lyme Disease has been on the increase in the past several years. There is a lot of controversy in the medical profession as to how to identify and address Lyme Disease in its early stages. There is a great concern among the general public regarding Lyme Disease that is why Christine is trying to schedule a seminar.

Mrs. Giroux asked if Mr. Berube could read the dates and the telephone number because this meeting is being broadcasted.

Mr. Berube stated the dates for spraying in Billerica are June 9, 15, 21, 24 and July 1 and the phone number is 1-508-393-3055 and can be reached from 7:00 a.m. to 3:30 p.m. Monday through Friday. The website for Central Mass Mosquito Control is [www.cmmcp.org](http://www.cmmcp.org).

### **New Open Meeting Law**

Mrs. O'Rourke stated the next item is the New Open Meeting Law.

Mr. Berube explained that included in the Board's package is a copy of the review of the New Open Meeting Law provided by Town Counsel. We have not received anything yet from the Attorney General's office. Town Counsel informed me that the implementation may be delayed until November 2010 because the Attorney General has not produced any new versions of the law or any guidance or educational material. I also included an article that discusses the key provisions of the New Open Meeting Law. I have discussed with Town Counsel how the Health Department documents the minutes and he feels that we are in compliance with the law.

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

The Board Members did not have any questions.

### **2010 Roadway Management Program**

Mrs. O'Rourke stated the last item under Board of Health Business is the 2010 Roadway Management Program.

Mr. Berube explained that Kelley Conway, Town Engineer, has provided the Health Department with a memo informing us of the roadways that will be paved as part of the 2010 Roadway Management Program. Originally this list was much longer but there were some concerns regarding Stormwater Management so the list was shortened. Mr. Berube reviewed some of the streets that would be repaved. Part of this program will include the intersection of Pond Street and Salem Road. There have been a lot of accidents at that intersection. The plan is to lower the intersection as much as 18 inches and straighten it out.

Mark Sampson, 4 Carmel Drive, identified himself. Mr. Sampson requested that the McFarland Cascade Progress Report and the EPA Iron Horse Park Superfund Site presentation be posted on the Town of Billerica website.

Mr. Berube replied that could be done.

**Miscellaneous**

Mr. Kane asked if the Health Department was charging for Burial Permits.

Mr. Berube replied that the Health Department charges ten (10) dollars for Burial Permits.

**7:45 p.m. Johnna LLC, Swanson Woods – Rangeway Road – Request Reissuance of Variance and Project Approval**

Mrs. O'Rourke stated the next hearing on the agenda is Johnna LLC, Swanson Woods, requesting reissuance of the Variance and Project Approval.

Joel Williams, Dresser, Williams and Way, identified himself. Mr. Williams explained that he was representing Johnna LLC. Mr. Williams introduced his clients, John Bandar, Besho Bandar and Hany Bandar. Mr. Williams explained that the Planning Board, Conservation Commission and Board of Health approved this project several years ago.

Mrs. O'Rourke asked when did the Board grant the project approval.

Mrs. Giroux replied in 2005.

Mr. Williams explained the project is on Rangeway Road across the street from the Swanson Meadow Townhouses and Golf Course. One building is up and weather tight. A second building has a foundation and the framing maybe in some construction phase. The third foundation is not in place yet. The proposed plan requires Board of Health permission for the variance because we are working within one hundred (100) feet of the Flood Plain. The previous Board of Health permit has expired.



Mr. Berube suggested that we come back for a public hearing to update the Board of the proposed plans. The project is before the Conservation Commission and we have filed a Notice of Intent. The previous Conservation Commission Order of Conditions has expired. That hearing is on Wednesday, June 9, 2010. Mr. Williams pointed to the plans and explained that the project is still under construction. Mr. Williams pointed to the plans and explained that Sheet 1 shows the existing condition as it is today.

Mr. Kenyon asked if anything has changed from the 2005 variance.

Mr. Williams replied that nothing has changed from the variance that was approved in 2005. The detention pond that is located out front needs to be addressed. The existing contours are not what have been proposed. A smaller retention pond out back has not been installed and is part of the continuing work. Mr. Williams re-emphasized that nothing has changed from what was previously approved.

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

Mr. Berube replied that included in the Board's package is a copy of the original variance that was approved. I don't have a problem approving the original variance with all the same conditions. They will have to engage the services of our consultants so that all the inspections of the remaining work can be completed. An as-built will have to be submitted and reviewed before the occupancy of any units. Bonds will have to be posted as well.

Mr. Kane asked when did the variance expire.

Mr. Williams replied the variance expired in 2007.

Mr. Kane stated a new application should be submitted because the variance has long since expired this should not be treated as an extension.

Mr. Berube replied that the applicant submitted a new application and is requesting the same approval that was granted before because most of the project has been constructed and they are just going to abide by the original plans.

Mrs. O'Rourke asked is that the original plan.

Mr. Williams replied that Sheet 1 shows what exists today and Sheet 2 is the proposed plan from the original.

Mrs. O'Rourke asked what is the date on the plan.

Mr. Williams replied the plan is dated March 1, 2010 to reflect that it is a new filing with the Conservation Commission.

Mr. Kenyon stated that he does not have a problem as long as it is written the same as when Board granted the variance in 2005.

Mrs. Giroux asked has any of the Board of Health Rules and Regulations changed since 2005 that would affect this project like Stormwater Management. Are there any new policies or procedures that would be related to this?

Mr. Berube stated that there have probably been some minor regulation changes. Where most of the project is already constructed, I would consider it unjust to have them go back and redesign the entire project.

Mrs. Giroux asked have the bonds been released.

Mr. Berube explained those bonds have not been released. That will be discussed at another meeting. The new applicant will be required to post bonds.

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

Paula Perry, 218 Rangeway Road Phase II Swanson Meadows, identified herself. Ms. Perry asked why is the leach field located so far away from the actual buildings. It is two tenths of a mile away from the actual buildings. The leach field at Swanson Meadows is located right on the property.

Mr. Williams pointed to the leach field and explained that it is still part of the overall property. Mr. Williams pointed to an area on the map and explained that area is wetland area and the septic could not be constructed there. Mr. Williams pointed to the plans and explained that is the only area suitable for the septic system because part of the property is upland and some of the area is ledge.

Ms. Perry stated that area is not maintained it is full of debris, weeds and pipes are sticking out. There are For Sale signs in the middle of the leach field. I am concerned about the maintenance of the leach field.

Mr. Williams replied that once more people purchase the units, they will have a condo association like Swanson Meadows and the association will be responsible for maintaining the area.

Ms. Perry stated but that leach field is two tenths of a mile away.

Mr. Berube explained right now there are new owners of the property prior to them it was owned by Jasmine Realty Trust and Steve Dresser and as you know the project went bankrupt and Steve Dresser lost the project. That is why you are seeing those conditions. It went to auction and the applicant tonight purchased the property and will address all the conditions that you have mentioned. The new owners are going to revive the project. They will have a Homeowners Association that will be responsible for maintaining the property including the septic system just like Swanson Meadows.

Ms. Perry stated that she wants to see the project go forward however I want to make sure that the association realizes that they need to maintain the property even though it is far away from the buildings.

Mr. Berube explained it is all part of one property.

Ms. Perry asked will there be any kind of fencing for protection because it is so close to the road and in the winter the plows dump snow in that area.

Mr. Berube explained that the septic system is designed to meet all the proper setbacks so those issues that you raise should not be a problem.

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

No one else had any questions.

Mrs. Giroux made a motion to grant a reissuance of the variance for Johnna, LLC, Swanson Woods on Rangeway Road in order to construct the Swanson Woods Townhouse Project within one hundred (100) feet of Flood Plain based on the following findings of fact and pursuant to the following conditions:

**FINDINGS OF FACT**

- 1) The work described in the applicant's request is within an area subject to protection under the Billerica Health's Rules and Regulations, Chapter 5, Section 5.5.005 (1).
- 2) The Board of Health conducted a public hearing on June 7, 2010 and properly notified abutters in accordance with Billerica Health Regulations, Chapter 1, Section 1.2.007.
- 3) The proposed project was reviewed by Jeffrey Rider, the Board of Health's Consulting Engineer, for potential impacts to the Flood Plain as well as compliance with applicable drainage regulations.
- 4) Previously, the Board of Health granted a variance for this project on November 7, 2005.
- 5) Presently, much of the site work has been substantially completed including the entry drive, installation of utilities and drainage systems and some site paving. There is one completed townhouse building and a second townhouse building under construction. However, work stopped at some point and the Order of Conditions expired. The project has transferred ownership. The new owner seeks to complete the project in accordance with the conditions of the original variance.
- 6) The Board of Health will impose reasonable conditions to ensure the project is constructed in accordance with approved plans.

- 7) 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 the Board of Health Rules and Regulations. Further, approval of the applicant's request will not be detrimental to the public health and environment.

**CONDITIONS**

- A) All construction must be in accordance with plans submitted for review and approval, prepared by Dresser, Williams, & Way, Inc. dated January 20, 2005 and revised to September 20, 2005 and stamped by Joel Williams RPE#29522.
- B) This variance shall not take effect until it is properly recorded at the Registry of Deeds and a certified copy of this variance is returned to the Board of Health office indicating that a marginal reference was made on the original deed.
- C) Any changes in the plan submitted and approved shall require immediate notification to the Board of Health by the Design Engineer and applicant. Further review and approval may be required at that time.
- D) An as built plan shall be submitted to the Board of Health before the approval of any occupancy permit, or other documentation to satisfy the intent of the Board of Health's approval of any project.
- E) There shall be no encroachment into the Flood Plain as delineated and approved on the plan submitted. This restriction shall be deemed a deed restriction and extend to all future owners of the property.
- F) There shall be no stump dump or dumping of any solid waste or liquid waste on site. Such activity shall constitute a violation of Massachusetts General Laws Chapter 111, Section 150A.
- G) These conditions, imposed by the Board of Health, cannot be changed without the written approval by the Board of Health and only after a proper public hearing is held.
- H) All drainage structures shall be installed and functioning in accordance with design standards prior to the approval of any building permits for the townhouses. A status letter may be submitted as proof of compliance with this condition, to satisfy the intent of the Board of Health.
- I) Upon completion of the work described herein, the applicant shall forthwith request in writing that a Certificate of Compliance be issued stating that the work has been satisfactorily completed.
- J) This order does not relieve the permittee or any other person of the necessity of complying with all other applicable federal, state or local statutes, ordinances, by-laws or regulations.

- K) The work authorized by these conditions shall be completed within two years from the date of this order, unless the time for completion has been extended to a specific date more than two years from the date of issuance and both that date and the special circumstances warranting the extended time period are set forth in this order.
- L) This order may be extended by the issuing authority upon application to the issuing authority at least 30 days prior to the expiration date of this order.
- M) Any fill used in connection with this project shall be clean fill, containing no trash, refuse, rubbish or debris, including but not limited to lumber, bricks, plaster, wire, lath, paper, cardboard, pipe, tires, ashes, refrigerators, motor vehicles or parts of any of the foregoing.
- N) This order does not grant any property rights or any exclusive privileges; it does not authorize any injury to private property or invasion of private rights.
- O) Failure to comply with all conditions stated herein, and with all related statutes and other regulatory measures, shall be deemed cause to revoke or modify this order.
- P) A cash bond shall be submitted to the Board of Health in an amount required by the following formula. Bonds required for projects shall be equal to ten (10) percent of the EQUITY OF THE PROJECT. Equity of the Project shall be determined as follows:  
Sales of homes/buildings/building lease – Cost of Construction x 10% = Bond amount required

All bonds are subject to the following conditions:

- 1) All bonds shall be cash bonds deposited in a bank selected by the Board of Health with release signed by applicant.
- 2) Any additional requirements as deemed necessary by the Board of Health may be a condition placed on the bond.
- 3) Bonds shall be kept for a minimum period of one (1) year after the date of the issuance of a certificate of compliance or occupancy permit for the final home, or building sold, or leased or other time frames as determined by the Board of Health.
- 4) The maximum amount of any bond shall be two hundred fifty thousand (250,000) dollars.
- 5) Said bond shall be posted and used by the Board of Health to correct any violations of its rules and regulations or a public health nuisance as determined by the Board of Health, if an applicant refuses to correct a violation or public health nuisance after notice has been provided.
- 6) Said bond must be posted prior to approval of permits. Said bond may be posted in installments with the approval of the Director of Public Health. In particular, an initial deposit shall be submitted to the Board of Health prior to the approval of any permits. Additional deposits shall be submitted to the Board of Health as

each unit is sold. The final bond amount shall be held for a period of one (1) year after the final occupancy permit is issued.

- Q) The Board of Health Consulting Engineer/Consultant shall conduct inspections to ensure compliance with approved plans and conditions. All inspections shall be conducted in accordance with an inspection schedule approved by the Director of Public Health.
- R) Agents of the Board of Health or their designee's, such as the Board of Health Consulting Engineer or others so designated shall have access to property covered by these conditions to make inquiries, conduct inspections, or take actions deemed necessary to protect the public health and the environment.
- S) The applicant must provide final approved plans for any project covered by the conditions. Final plans are considered plans approved by all town departments.
- T) Any approval, variance or waiver granted by the Board will not become effective until all outstanding invoices from the Consulting Engineer/Consultant have been paid by the applicant.
- U) 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.
- V) Sewage disposal system plans shall be designed in accordance with the provisions of 310CMR15.000 the State Environmental Code, Title 5 and the Board of Health Rules and Regulations and submitted to the Board of Health for review and approval prior to the issuance of approvals for any building permits by the Health Department.
- W) Final approval of comprehensive plans must be obtained from Jeffrey Rider, the Board's Consulting Engineer and the Director of Public Health prior to the approval of any permits.
- X) Proof that a NPDES (National Pollutant Discharge Elimination System) Notice of Intent has been filed with the EPA (Environmental Protection Agency) shall be provided to the Board of Health prior to the approval of any permits.
- Y) A proper Operation and Maintenance Plan for the stormwater drainage system must be approved by the Board of Health and the Board's Consulting Engineer prior to the approval of any occupancy permits.
- Z) The applicant must submit condominium/homeowners association documents to the Board of Health for review and approval prior to the approval of any occupancy permits. Said documents must reference all conditions of the Board of Health and must include language covering the association's responsibility for maintaining the drainage system and sewage disposal system in

accordance with the approved Operation and Maintenance Plans

AA) This variance supercedes Variance #05-38-1-056 granted by the Board of Health on November 7, 2005.

Mr. Reader seconded. So voted unanimously.

**7:55 p.m. Phil Malonson – 6 Simmons Lane – Request a Waiver of Regulations to construct a shed within the Flood Plain**

Mrs. O'Rourke stated the next hearing is Phil Malonson, 6 Simmons Lane, requesting a Waiver of Regulations to construct a shed within the Flood Plain.

Phil Malonson, 6 Simmons Lane, identified himself. Mr. Malonson explained that he bought this property from the Swift family. Mr. Malonson pointed to the plans and explained about the property and the flood plain and the location of the shed that he constructed. The shed is up on blocks.

Mrs. O'Rourke asked Mr. Malonson what is he looking for.

Mr. Malonson replied that he wants approval for a Waiver of Regulations for the shed that is already constructed. The shed is not near the river.

Mrs. O'Rourke asked do you want to move the shed or build a new one.

Mr. Malonson replied that he just wants approval to leave the shed where it is now.

Mrs. O'Rourke stated so the shed is already there and you want the Board to grant approval for the shed that is already constructed.

Mr. Berube explained that the Board has granted a similar waiver in the past at 22 Quaker Lane. His entire property is in the Green Engineering Flood Plain however the portion of his property where his house and shed are located is probably above the FEMA Flood Plain. I don't have a problem with recommending the waiver.

Mrs. O'Rourke asked how long has the shed been on the property.

Mr. Malonson replied approximately five (5) weeks.

Mr. Kane asked what is the floor elevation of the shed.

Mr. Malonson replied approximately six (6) inches off the ground. The shed is up on blocks.

Mr. Kane stated that his concern is if Mr. Malonson stores any gas or chemicals in the shed and if it is in the Flood Plain the chemicals could contaminate the water.

Mr. Malonson replied that he only stores tools in the shed.

Mr. Berube stated the Board can stipulate in the conditions that if any petroleum or chemical products are stored in the shed they have to be secured up on shelves.

Mrs. O'Rourke asked is there any electricity in the shed.

Mr. Malonson replied there is no electricity in the shed.

Mrs. Giroux made a motion to grant a Waiver of Billerica Health Regulations, Chapter 5, Section 5.5.005 (1) at 6 Simmons Lane to allow a previously constructed shed to remain within the Flood Plain with the stipulation that all chemical products be secured on shelves and the shed is to remain free of electricity based upon the following findings of fact and pursuant to the following conditions:

**FINDINGS OF FACT**

- 1) The work described in the applicant's request is within an area subject to protection under the Board of Health's Rules and Regulations, Chapter 5, Section 5.5.005(1).
- 2) The applicant proposes to construct a shed to be located on the highest portion of the property. The site falls within the FEMA and Green Engineering Flood Plain.
- 3) The shed will be raised on blocks above existing grades.
- 4) The applicant is aware that any petroleum and chemical products must be stored on shelves and mitigation measures must be employed during a flood to avoid any contamination of flood waters.

**CONDITIONS**

Standard conditions number 4, 6, 10, 11, 12, 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.
- B) Any petroleum and chemical products must be securely stored on shelves at least three (3) feet above the floor of the structure.

Mr. Kenyon seconded. So voted unanimously.

**8:00 p.m. Graystone Estates – Gray Street – Definitive Subdivision Approval**

Mrs. O'Rourke stated the next item on the agenda is Graystone Estates Definitive Subdivision Approval.



Attorney Jim Dangora, Jr., Shea, Dangora and Nelson, 599 Boston Road, Billerica identified himself. Attorney Dangora explained that he was representing the applicant for Graystone Estates. The proposal is for a four (4)-lot subdivision. The site consists of 8.5 acres. The plan does not show the entire property because a portion of the lot out back is wetland. Mr. D'Ambrosio has been seeking approval for a couple of years. The applicant has gone before the Board of Appeal and the Planning Board for the Definitive Subdivision approval. Attorney Dangora pointed to the plans and explained that of the 8.5 acres we will be building in the front of the lot towards Gray Street. There is a series of power lines that dissects the property. The Board of Appeal allowed us to build in front of the power lines. The plan is to donate 1.5 acres of the land out back to Conservation. We were able to reduce our lot size and frontage in some instances. The Planning Board hired Fay, Spofford and Thorndike to review the drainage on behalf of the applicant. The plans were approved based on a ten (10) year storm event. Phil Paradis from BETA Group reviewed the project on behalf of the Board of Health and recommended that we increase the storm event from a ten (10) year to a twenty-five (25) year storm event. Some minor adjustments were made to the plan. Phil also recommended that our drainpipe be increased from a 12- inch pipe to a 15-inch pipe to accommodate the twenty-five (25) year storm event. Attorney Dangora pointed to the plans and explained the area where Phil recommended that a series of double catch basins be installed to catch more of the roadway runoff. He also recommended that we include another manhole to get to the drainage pipe. Phil reengineered the plans slightly. In your package is a copy of the correspondence between Phil Paradis, BETA Group and the applicant's engineer, Carlos Quintal. You will see in Phil's closing report that we have met all of BETA's requirements. We have met the stormwater management guidelines. There will be no discharge in the wetland resource areas. The post development peak discharge rates do not exceed the pre development discharge rates. There is sufficient and adequate groundwater infiltration not only through the basement but also through roof runoff and drywells. The total suspended solids are 85%, which exceeds the guidelines of 80%. Carlos has put together an erosion control plan. The Planning Board has approved the operation and maintenance plan. The Homeowners Association will be required to maintain the drainage system. This project was first engineered and approved for a ten (10) year storm event now it has been approved for a twenty-five (25) year storm event. Attorney Dangora explained that in 2000 the previous owner of the property originally subdivided the property and the Board of Health stated a condition that there could be no further subdivision plan until it was reviewed and approved by the Board of Health. We are there tonight to address the drainage issues and request the release of the prior decision that there could be no further subdivision plan for this property. We came before this Board many years ago and at that time you told us to get approval from the other Boards and then come back. Attorney Dangora pointed to the area and explained that a walking path would also be created.

Mrs. O'Rourke asked is this the property that has a shed and a fence out back.

Attorney Dangora explained this has nothing to do with that property.

Mr. Kenyon asked have you satisfied all the Planning Board and Conservation Commission issues.

Attorney Dangora replied that there are no Conservation Commission issues because we are not discharging into the resource area and we are not within one hundred (100) feet of the Green Engineering Flood Plain. However the Conservation Commission will be the beneficiary of 1.5 acres out back.

Mrs. O'Rourke asked is this the area where the pond is.

Attorney Dangora replied that he is not sure if there is a pond, but there are wetlands out back. We are not near the wetlands. It is a five (5)-lot subdivision but only four (4) of the lots are buildable.

Mr. Berube explained that Richardsons Pond is near this area and discharges to the wetland area by the tracks. Phil Paradis, BETA Group has reviewed the project on behalf of the Board of Health. This project was originally reviewed by Fay, Spofford and Thorndike however they are no longer one of the Town's consultants. BETA Group has reviewed this project on behalf of the Board of Health. This project has been reengineered to comply with the current Massachusetts Stormwater Management Policy. Mr. Berube asked Phil to give the Board a brief report.

Phil Paradis, Professional Engineer, BETA Group identified himself. Mr. Paradis explained that he reviewed this project under the direction of Richard Berube, the Director. As Attorney Dangora stated this project was engineered some time ago and the stormwater regulations were updated effective January 2008. The applicant has updated the stormwater pollution prevention plan, the operation and maintenance plan and some of the calculations to comply with the regulations. We are currently waiting for them to schedule the pre-construction meeting with the updated prevention and pollution plan. Other than that they have complied with the standards.

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

Mr. Berube commented that the dwellings on the four (4) lots will be served by septic systems and drainage for the roof runoff will be incorporated.

Mrs. O'Rourke asked if anyone in the audience had any questions regarding Graystone Estates.

No abutters were present.

Mr. Kenyon made a motion to grant Definitive Subdivision Approval for Graystone Estates based on the following conditions:

1. All construction must be accordance with plans submitted for review and approval, prepared by CAQ Engineering Associates, Inc., dated September 2004 and revised to March 17, 2010 and stamped by Carlos A. Quintal, RPE #30812.
2. This variance shall not take effect until it is properly recorded at the Registry of Deeds and certified copy of this variance is returned to the Board of Health office indicating that a marginal reference was made on the original deed.

3. Any changes in the plan submitted and approved shall require immediate notification to the Board of Health by the Design Engineer and applicant. Further review and approval may be required at that time.
4. An as built plan shall be submitted to the Board of Health before the approval of any occupancy permit, or other documentation to satisfy the intent of the Board of Health's approval of any project.
5. There shall be no encroachment into the Flood Plain as delineated and approved on the plan submitted. This restriction shall be deemed a deed restriction and extend to all future owners of the property.
6. There shall be no stump dumps or dumping of any solid waste or liquid waste on site. Such activity shall constitute a violation of Massachusetts General Laws Chapter 111, Section 150A.
7. These conditions, imposed by the Board of Health, cannot be changed without the written approval by the Board of Health and only after a proper public hearing is held.
8. All drainage and stormwater management structures shall be installed and functioning in accordance with design standards prior to the approval of an occupancy permit. A status letter may be submitted as proof of compliance with this condition, to satisfy the intent of the Board of Health.
9. Upon completion of the work described herein, the applicant shall forthwith request in writing that a Certificate of Compliance be issued stating that the work has been satisfactorily completed.
10. This order does not relieve the permittee or any other person of the necessity of complying with all other applicable federal, state or local statutes, ordinances, by-laws or regulations.
11. The work authorized by these conditions shall be completed within two years from the date of this order, unless the time for completion has been extended to a specific date more than two years from the date of issuance and both that date and the special circumstances warranting the extended time period are set forth in this order.
12. This order may be extended by the issuing authority upon application to the issuing authority at least 30 days prior to the expiration date of this order.
13. Any fill used in connection with this project shall be clean fill, containing no trash, refuse, rubbish or debris, including but not limited to lumber, bricks, plaster, wire, lath, paper, cardboard, pipe, tires, ashes, refrigerators, motor vehicles or parts of any of the foregoing.
14. This order does not grant any property rights or any exclusive privileges; it does not authorize any injury to private property or invasion of private rights.

15. Failure to comply with all conditions stated herein, and with all related statutes and other regulatory measures, shall be deemed cause to revoke or modify this order.
  
16. A cash bond shall be submitted to the Board of Health in an amount required by the following formula. Bonds required for projects shall be equal to ten (10) percent of the EQUITY OF THE PROJECT. Equity of the Project shall be determined as follows:  
Sales of homes/buildings/building lease – Cost of Construction x 10% =  
Bond amount required  
All bonds are subject to the following conditions:
  - 1) All bonds shall be cash bonds deposited in a bank selected by the Board of Health with release signed by applicant.
  - 2) Any additional requirements as deemed necessary by the Board of Health may be a condition placed on the bond.
  - 3) Bonds shall be kept for a minimum period of one (1) year after the date of the issuance of a certificate of compliance or occupancy permit for the final home, unit or building sold, or leased or other time frames as determined by the Board of Health.
  - 4) The maximum amount of any bond shall be two hundred fifty thousand (250,000) dollars.
  - 5) Said bond shall be posted and used by the Board of Health to correct any violations of its rules and regulations or a public health nuisance as determined by the Board of Health, if an applicant refuses to correct a violation or public health nuisance after notice has been provided.
  - 6) Said bond must be posted prior to approval of permits. Said bond may be posted in installments with the approval of the Director of Public Health. In particular, an initial deposit shall be submitted to the Board of Health prior to the approval of any permits. Additional deposits shall be submitted to the Board of Health as each unit is sold. The final bond amount shall be held for a period of one (1) year after the final occupancy permit is issued.
  
17. The applicant and his construction supervisor/contractor and project engineer shall request and attend a preconstruction meeting with the Director of Public Health, the Board of Health's Consulting Engineer and any other interested parties prior to beginning any construction in order to review the construction sequence for the project, establish an inspection schedule and address any other concerns. The meeting request and written Notice of Construction Commencement shall be submitted to the Board of Health at least fourteen (14) days prior to beginning construction.
  
18. The Board of Health Consulting Engineer/Consultant shall conduct inspections to ensure compliance with approved plans and conditions. All inspections shall be conducted in accordance with an inspection schedule approved by the Director of Public Health.

19. The applicant, or his agent, shall notify the Board at least forty-eight (48) hours in advance of scheduled inspections, or completion of construction operations requiring inspection, and prior to starting work on the succeeding construction operation.
20. Proof that a NPDES (National Pollutant Discharge Elimination System) Notice of Intent has been filed with the EPA (Environmental Protection Agency) shall be provided to the Board of Health prior to the approval of any permits. The applicant must provide a copy of the Stormwater Pollution Prevention Plan (SWPPP) to the Board of Health.
21. A preliminary as-built plan for the stormwater drainage and infiltration system shall be submitted to the Board of Health and the Board's Consulting Engineer/Consultant for review and approval prior to the laying of any pavement.
22. Erosion and sediment control measures shall be implemented and maintained in all areas disturbed by construction activity including but not limited to construction and waste material storage areas. Erosion and sediment control structures shall be installed prior to beginning construction.
23. Agents of the Board of Health or its designee's, such as the Board of Health Consulting Engineer, or others so designated, shall have access to property covered by these conditions to make inquiries, conduct inspections, or take actions deemed necessary to protect the public health and the environment.
24. The applicant must provide final approved plans for any project covered by the conditions. Final plans are considered plans approved by all town departments.
25. Any approval, variance or waiver granted by the Board will not become effective until all outstanding invoices from the Consulting Engineer/Consultant have been paid by the applicant.
26. A COC will not be issued until all outstanding invoices from the Board of Health Consulting Engineer/Consultant for inspections or other services rendered during construction have been paid by the applicant.
27. 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.
28. Final approval of comprehensive plans must be obtained from BETA Group, the Board's Consulting Engineer and the Director of Board of Health prior to the approval of any permits.
29. If the subdivision is to be served by individual on-site sewage disposal systems, sewage disposal system plans shall be designed in accordance with the provisions of

310CMR15.00 the State Environmental Code, Title 5 and the Board of Health Rules and Regulations and submitted to the Board of Health for review and approval prior to the issuance of approvals for any building permits by the Health Department. Furthermore, drainage plans for the infiltration of roof runoff shall be provided to the Board of Health for review and approval. The design of the roof infiltrating units can be incorporated into the design plans for the sewage disposal systems.

30. A Homeowner's Association shall be formed for the purposed of providing maintenance for the stormwater drainage system serving the subdivision. Homeowner's Association documents shall be submitted to the Board of Health for review and approval prior to the approval of any occupancy permits. Said documents must include language covering the association's responsibility for maintaining the drainage system and shall reference the approved Operation and Maintenance Plan for the system.
31. The property deeds to each dwelling shall contain language approved by the Board of Health regarding the owners' responsibility in conjunction with the Homeowner's Association for maintaining the drainage structures in accordance with the approved Operation and Maintenance Plan for the drainage system.

Mr. Kane seconded. So voted unanimously.

**8:10 p.m. John Wright – 22 Quaker Lane – Request Variance to reconstruct single family dwelling within 25 feet of the Flood Plain**

Mrs. O'Rourke stated the next item on the agenda is John Wright, 22 Quaker Lane, requesting a variance to reconstruct a single family dwelling within 25 feet of the Flood Plain.

John Wright, owner of 22 Quaker Lane, Billerica identified himself. Mr. Wright explained that he is requesting a variance to reconstruct a single-family house that was destroyed by fire in November 2009. This parcel is on the Concord River and the entire property is within one hundred (100) feet from the edge of the water. I am requesting a variance that will allow me to rebuild the property and match the Green Engineering Flood Plain to the FEMA level Flood Plain. The work will be within twenty-five (25) feet of the flood plain.

Mr. Berube explained that on the map that has been provided the flood plain lines show the 100 year FEMA Flood Plain elevation is 119 and that the new FEMA maps in effect show that elevation has dropped to 118. The Green Engineering Flood Plain map elevation is 119 and that has been adjusted from 122. All the proposed work will be above the Flood Plain limits. There will be no work within the Flood Plain.

Mr. Kenyon stated on the plan that is provided the edge of the water line recorded location is dated (8/12/02). Last year and this year there was another record high for the river is that still the water line.

Mr. Wright replied explained that the edge of the ice line on the plan is dated (2/4/2010) which is from the initial survey. Where the vegetation is out to the 2002 level the water goes back and forth. At that point it slopes gradually into the water. The water is about ten (10) feet above the typical level. The original house was about two (2) feet above the contour. The new house will be raised up. Any living space will be above the five hundred (500) year hundred-storm event.

Mrs. O'Rourke asked what happened to the house that was there.

Mr. Wright replied it was destroyed by fire November 1, 2009.

Mr. Reader asked is the existing boathouse going to remain.

Mr. Wright replied yes. The structure is on four pylons. It is a raised structure. It is about 6-8 feet above the water line.

Mr. Reader asked can you take a boat from the river and put it into the boathouse.

Mr. Wright replied it is not really a boathouse it is a shed.

Mr. Kenyon asked how old was the original house.

Mr. Wright replied it was built in 1900 and is one of the old cottages.

Mr. Kane asked will the new footprint match the old footprint.

Mr. Wright replied the new footprint is different than the old footprint. In order to meet the new twenty (20) foot setback for a grandfathered house it has to be pulled back away from the road. It is as close to the road and back away from the water as it could be.

Mr. Kane asked is the square footage of the footprint similar to the old footprint.

Mr. Wright replied yes. The footprint is 30' by 30' similar to the old house. The original property had a wrap around concrete garage. I am replacing that with a covered garage.

Mr. Kenyon asked is it going to be a single story.

Mr. Wright replied part of it will be a single story and part of it will be a two story.

Mr. Reader asked will there be a full basement.

Mr. Wright replied yes. The basement floor elevation will be 117.5.

Mr. Berube explained the basement floor will be two (2) feet above the water table. Mr. Berube explained that he did not have any issues with granting the variance. I met with Mr. Wright and he has complied with all the Board of Health regulations. All the work will be taking place outside of the flood plain.

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

No abutters were present.

Ed Reiner, 1 Pinewood Avenue, Billerica identified himself. Mr. Reiner explained that he was not an abutter but he would like to talk about the revised FEMA Flood Plain maps. Mr. Reiner stated that he wanted to talk about the difference between the old NGVD 1929 datum and the new NAVD 1988 datum. The last flood elevations at the property were approximately 118.6 and the water was half way up the wood of the floor of the shed. Mr. Reiner talked about his concern regarding the finished shed and any filling in that might occur. Mr. Reiner stated that he wanted to discuss the elevations and the need for a sump pump and where the sump pump could be discharged.

Mr. Berube replied that the Board of Health requires that the basement floor elevation be two (2) feet above the water table so a sump pump will not be required because the basement will be dry and the elevation will be higher than the elevation of the original house. As for filling in of the flood plain, if the Board grants the variance there will be an order of conditions. The conditions will stipulate what kind of fill can be used and the Board of Health will be there to inspect the project as the work is being done.

Mr. Reiner stated that he understands the two (2) feet above the water table but when we had the last flood the water was prolonged. So a sump pump may be required.

Mrs. O'Rourke asked if anyone else had any questions on 22 Quaker Lane.

Mr. Kane made a motion to grant the variance of the Billerica Board of Health Rules and Regulations, Chapter 5, Section 5.5.005 (1) (2) at 22 Quaker Lane in order to construct a single family dwelling within twenty-five (25) feet of the Flood Plain based on the 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 reconstruct a single-family dwelling that was destroyed by fire. The new dwelling will be serviced by town water and sewer.



- 3) The location of the proposed dwelling will be approximately within twenty-five (25) feet of the Green Engineering Flood Plain elevation 119 (adjusted) and the FEMA Flood Plain elevation 119. 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 and 21 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 Bruce Saluk & Associates, Inc., dated February 18, 2010 and revised to May 17, 2010 and stamped by Bruce M. Saluk RPE# 32375.
- B) The basement floor of the proposed dwelling shall be constructed not lower than elevation 117.5.

Mr. Kenyon seconded. So voted unanimously.

### **8:20 p.m. Billerica Schools – 52 River Street – Request Variance and Project approval for construction of the New Parker School**

Mrs. O'Rourke stated the next item on the agenda is the New Parker School.

Mr. Infanger thanked the Board for allowing the project engineers to present the new Parker School project. Mr. Infanger explained about the variances and approval that will be needed for the new Parker School project. Mr. Infanger introduced the members of the Parker School Committee that were present at the meeting Frank Antonelli, Assistant Superintendent of Business, Vincent Amato, Bob Casey and myself and the architectural representatives from Symmes Maini & McKee as well as the project manager Joshua Hudson. Mr. Infanger introduced Jamie Warren who is responsible for this project.

Jamie Warren, Civil Engineer with Symmes Maini & McKee Associates identified himself. Mr. Warren explained that we are the architects and engineers responsible for the full design of the building as well as the civil engineers for the project. Mr. Warren stated that he would provide the Board with a summary of the project. Mr. Warren pointed to the plans and explained that River Street, Parker Street and Pages Court would be involved. The site is 8.6 acres. The proposed project of the new Parker School will replace the existing school and will be constructed in the rear ball field. The existing school will be in full operation while the new building is being constructed. Phase I will start in the summer of 2010 and end in June 2012. The new school will be ready for occupancy in 2012. Then the

contractor will abate and demolish the existing school and construct the remaining site improvements. We will be constructing 96 parking spaces, two driveways from River Street and a fire lane around the building. There will be some play area for the kindergarten classes. The reason that we are present tonight is to discuss the drainage system and the two variances that are needed for the project. The two variances that are needed are related to construction within the Green Engineering Flood Plain located between the existing driveway and the church driveway. The Conservation Commission walked that site to confirm that it is not a regulatory wetland. The second variance is for the finished floor elevation of the building in terms of separation to seasonal high groundwater. In terms of the first variance the proposal is to reconstruct the driveway, bring new utilities out to serve the new building as well as to widen the driveway. The driveway is currently 18–19 feet wide and the plan is to widen the driveway to 24 feet. We are going to build a new sidewalk with a guardrail for pedestrian protection. We will not be encroaching any closer to the Green Engineering Flood Plain than what exists today. The first floor elevation of the building is currently set at elevation 240. Mr. Warren explained the slope of the field and how it slopes towards the building down to elevation 236-237. This is going to be a single floor plate building and be uniform at elevation 240. A series of borings and test pits were performed across the site to understand the groundwater conditions on the site. We used the worst-case scenario of twenty-four (24) inches below grade to understand what mitigations are required to offset the cut elevation. In order to mitigate and control the ground water through the deep cut we are proposing the installation of multiple under drain systems. During the initial construction we are first proposing the installation of a slope cut off drain at the deepest cut. We are proposing a perimeter foundation drain 360 degrees around the building as well as an under slab drain on the easterly portion of the building. Once the cut has been made we anticipate the ground water to equalize. We are requesting two variances tonight one for the driveway and one for the building. We are also requesting approval of the plan review associated with the drainage design for the project. Mr. Warren asked the Board Members if they had any questions.

The Board Members did not have any questions at this time.

Mr. Warren explained that a drainage system has been designed in accordance with the Board of Health Rules and Regulations and the MassDEP Stormwater ten standards of the stormwater handbook. The system addresses the increase in impervious surface for this project. We have proposed to offset the increase with a rooftop recharge system located at the northwest corner of the building where the fill is the deepest and there is increased separation of groundwater. The rest of the site is at or above existing grade. This will handle the roof top runoff into the ground. In order to mitigate that increased peak we are proposing a detention basin located off the driveway to the Parker Street. We have realigned the driveway slightly so that the detention basin is on the south side of the driveway so that if there is an overflow it would overflow into the street drainage system and not down the slope into any residential abutters. Through the use of this system we will be able to mitigate the anticipated increase in peak runoff from the site up to a one hundred (100) year storm event. We have also included porous pavement for the proposed fire lane. This will provide added protection for the smaller storm events. We will be reducing the amount of runoff going to the direct abutters. Everything will be redirected inward, then it will be stored and released at a control rate. Mr. Warren stated that members of the

design team are present to talk about some other elements of the project such as the lighting design, traffic and noise that would be generated.

Mr. Berube stated that Jeff Stearns from Woodard & Curran is present tonight. Jeff performed the peer engineering review for the Board of Health. A copy of the report is included in the Boards package. The Board of Health's primary concern is stormwater management as well as the request for the two variances however the review was expanded to include noise, light and traffic.

Jeff Stearns, Project Engineer, Woodard & Curran identified himself. Mr. Stearns stated that he would give a brief summary of the report. The report is broken up into three (3) sections. The Civil Site Section, which talks about the land and government of the project. The other sections are the stormwater system and the traffic and noise sections. In the Civil Site Section the two variances are explained. The applicant is requesting a waiver from the two (2) foot separation to the estimated seasonal high groundwater to construct the basement slab of the proposed elementary building and the second variance is for a waiver from the twenty-five (25) foot no alteration buffer to construct the access drive to River Street. Based on Mr. Warren's comments and what I have reviewed I do not object to either variance. I reviewed the stormwater system and commented on the subsurface infiltration structure not having a two (2) foot separation to groundwater. I also commented on the dry detention basin not having the proper calculations to show the draw down within twenty-four (24) hours. There are a few other minor items that need to be addressed. The two (2) foot separation and the alteration buffer need to be addressed and in compliance with the Massachusetts Stormwater Management guidelines and the Billerica Board of Health Rules and Regulations. I also commented on the size of the TSS (total suspended solids) Stormceptor units. I also commented on the operation and maintenance of the system and how much it will cost to maintain the system, how much it will cost the Town and who would be responsible for the operation and maintenance of the system. We also reviewed the lights around the building. The lighting along the north property line abutting New Colony Baptist Church will spill across the property line. We asked the applicant to provide documentation that the spill lighting is acceptable to the adjacent properties. We asked them to install wall packs around the building. There is a section on general engineering comments that are relative to the construction of the site. A noise consultant was hired, Tech Environmental, Inc. to review the Town of Billerica's Noise By-Law. They found that the night-time exterior noise limit was exceeded. They could not concur that the DEP Noise Policy was met because of the EUR on the facility. Our noise consultant pointed out that the proposed new school is exempt from complying with the Town of Billerica Noise By-Law. The applicant is addressing the night-time noise exceedence. Pare Corporation completed a review of the Traffic Impact Analysis for the proposed Parker Elementary School. There is only minor modeling that needs to be addressed. Signage should be posted onsite and at the site entrances indicating the designated parent and bus entrances and drop off locations. The speed study data indicates that the 85 percentile speeds are exceeded particularly during school hours. The Town may consider additional enforcement on River Street to slow travel speeds. They do not think the project will increase any level of service in a certain area. Mr. Stearns commented that overall Symmes Maini & McKee Associates have done a good job with their design and they have provided adequate documentation for Woodard & Curran to review.

Mr. Kenyon asked Mr. Stearns if has received any feedback as to how they are going to correct these issues.

Mr. Stearns replied that on Friday, June 4, 2010 he received a package from Symmes Maini & McKee and I discussed the report with my noise and traffic engineers and they agreed that these comments are adequate but we did not have time to review the entire package. We will respond to their comments as soon as possible. Mr. Stearns asked the Board Members if they had any questions.

Mrs. Giroux stated there is a provision for speed; they have crossing guards at the school. Why would speed be an issue?

Mr. Warren explained that the statement is referring to an existing traffic condition not the school.

Mr. Berube explained that he has received a memo from the Department of Public Works (DPW) on June 7, 2010 outlining their comments about the proposed school. Mr. Berube stated that he would give the applicant a copy of the memo so they can address those issues. There are still a number of issues that need to be resolved. It states in the report that the existing Parker School will be in operation when they build the new school. There is a concern with the control of construction. We will need to see a demolition plan before the demolition begins. The neighbors will probably be concerned with the dust and hazardous materials that could possibly become airborne during the demolition of the old Parker School.

Mrs. O'Rourke asked if anyone in the audience has any questions on the new Parker School.

Grant Whiteway, Sr., 17 Parker Street, identified himself. Mr. Whiteway pointed on the map and asked if they have taken into consideration where the residents currently pump their water.

Mr. Warren replied the off site contribution has been taken into account.

Mr. Whiteway asked how much of an offset is there from the detention pond.

Mr. Warren replied ten (10) feet to the edge of the basin.

Mr. Whiteway asked how deep is the detention pond.

Mr. Warren replied it is approximately five (5) feet deep. It is a dry detention basin that has a sloping bottom and at its deepest points it is five (5) feet.

Mr. Whiteway asked will it tie into the storm system.

Mr. Warren replied yes it has an overflow control structure and a drain line connection to the existing Parker Street drainage system.

Mr. Whiteway asked have you addressed the drainage problem that the neighbors on River Street have.

Mr. Warren replied we are reducing the amount of surface runoff that is contributing to those properties now. Mr. Warren pointed to the map and explained the existing conditions, the drainage flow and discharge to the abutters and the River Street homes, and how there would be a significant reduction in terms of surface runoff.

Mr. Whiteway asked how much additional paving will be done near the proposed detention pond.

Mr. Warren replied the increase in impervious surface is 1.1 acres and the recharge surface in the basin. A portion of that will be sent to River Street.

Mr. Whiteway stated the old drain system has always been a problem.

Mr. Berube asked which drain system are you referring to.

Mr. Whiteway pointed to the map and explained that the drainage system has always been a problem for the residents and we were told that the drainage is the Town's problem. The drainage system should be addressed.

Mr. Berube asked how much impervious area exists and is there going to be an increase in impervious surface.

Mr. Warren replied yes, there will be an increase in impervious area. It will be 1.1 acres.

Mr. Berube asked what percentage is that.

Mr. Warren replied the entire site is 8.6 acres.

Dennis Johns, 46 River Street identified himself. Mr. Johns stated we have a tremendous water problem in this area. There is a culvert that runs down through all our backyards and that is a problem now. Where is all this water going to go? The drainage is no good. The lights from the school shine into my backyard. Hopefully there is a plan to mitigate the traffic. They are not taking into consideration any of the drainage problems in that area.

Richard Silva, 23 Pages Court, identified himself. Mr. Silva submitted to the Board some pictures of a storm that lasted for a day and a half. The water was two (2) feet deep and sat for four (4) days before it perked into the ground. When we had the big storm in March 2010 River Street was a big pond.

Mr. Warren stated under the existing conditions there is 2.61 acres of impervious surface, which includes the existing building, parking, driveways and the play space in the back of the building. The

proposed on site impervious surface, which includes all paved surfaces and the porous pavement is 3.75 acres for an increase of approximately 1.14 total acres across the site. Mr. Warren pointed to the plans and explained that a utility locator service company was hired to locate the drain line. The drain line is not on the school property it is on the backside of the residential properties. We are not proposing to increase any runoff to the Green Engineering Flood Plain and any residential homes on River Street. This system will be completely isolated from the school. The system will receive the off site drain system and will function 100% as it does today with the added improvements of reduction in the surface area.

Mr. Johns asked where is that water going to go.

Mr. Warren replied the proposed drainage for the project will be 100% collected in a closed drainage system consisting of catch basins and curbing. There is only two to three on site drainage structures that will capture surface runoff. Mr. Warren pointed to the catch basins on the plans and explained how the catch basins and drainage system would work.

Mrs. O'Rourke asked who is going to be responsible for cleaning the catch basins.

Mr. Warren replied the school department will be responsible for cleaning the catch basins.

Robert Doherty, 40 River Street, identified himself. Mr. Doherty stated it is not a culvert that they are referring to it is a no name brook according to the EPA. At the elderly housing they are spending five hundred thousand (500,000) dollars to pump more water into that pipe. Where is all this water going to go? They pushed the brook onto the people's property. I have lived in Billerica before this school was built. They pushed the brook back thirty (30) feet that is why the brook is on the people's property. They built that school and pushed the brook onto the people's property. Are you going to take responsibility for driving buses over that pipe and what happens if the pipe collapses? Mr. Doherty explained that when he contacted the EPA they told him if someone had asked they would have given them the layout of the brook.

Robert Casey, 15 Blanchard Avenue, identified himself. Mr. Casey showed the location of his property on the plans. Mr. Casey stated that he is also a member of the Planning Board but he is not speaking as a member of the Planning Board. He is speaking on his own behalf as an abutter. Last year I was appointed to the Parker School Building Committee by the Planning Board however I am resigning because I am an abutter, a resident of the neighborhood, an educator and I also attended the Parker School. Mr. Casey explained that this is a very complex project. This is a small area to build a big school in and then take down the existing school. It is a congested area. The school has been there for sixty (60) years and everyone wants to make sure this works. As a Committee Member for years, the issues on River Street are very accurately stated. Everyone knows that the neighbors on River Street have issues. One of the things that concerns me is the determination by the Parker School Building Committee that since this line is not on Town land it is not something that the project would address. From my training on the Planning Board if this were a private project off site mitigation measures would be required. I think that some attention should be given to the existing conditions because the conditions

are very poor. The center area is high but it is on ledge. I am recommending that something be done off site on the River Street side to mitigate this issue. A lot of the water that is passing through is coming from other sites. I am also concerned with the sound report that was done. The indication is that the Town does not have to follow its By-Laws. I think it would be proactive and smart if the Board of Health and the Building Committee require a condition that the noise attenuation meet the Town's Noise By-Laws and the MassDEP By-Laws. That should be looked at and required. Mr. Berube has been at my property several times, not because we are social friends but because someone thought my house was flooding the Parker School Field. I think a lot of work has been done for this project and it is a very sophisticated drainage system. I think the concern on our cul-de-sac is that the water would find a way out and not just be pushed back. Every spring our area is very wet. For sound I would suggest you go to the highest attenuation of the Town's By-Laws and MassDEP By-Laws, which Tech Environmental is advising. The lighting design program has not been completed. We would like the lighting to be contained according to the By-Laws for the entire site. Mr. Casey requested that the Board consider the neighbors when reviewing the drainage system. Mr. Casey submitted a letter documenting all his concerns that he referred to.

Mr. Berube explained that in the past the Board has reviewed a number of projects and they have always taken into consideration off site drainage. In fact the Board has stipulated conditions that a number of projects would be required to do off site drainage mitigation. As far as the noise there is a potential that it could be come a nuisance in the future. The Board will look at that very carefully.

Mr. Warren clarified that the initial submission was sent to the Board. We received peer review letters and submitted a subsequent package that addressed the initial peer review responses. The committee approved additional noise analyses for the project to ensure compliance with the Billerica Noise By-Law and MassDEP's Noise Regulation. Acentech is present tonight to give a brief summary of all the analyses that have been done to date and the mitigation that is built into the project and a quick overview of all the noise related issues. Ben Markham and Alicia Wagner are present from Acentech.

Ben Markham, Acentech identified himself. Mr. Markham handed to the Board Members a copy of the Environmental Noise Analysis that was conducted by Acentech.

David Fanuele, Symmes Maini & McKee identified himself. Mr. Fanuele pointed to the roof plan and explained that the items highlighted on the roof are the mechanical systems that supply heating and cooling to the school. Ten (10) foot high acoustically absorbed sound panels will surround the mechanical system.

Mr. Markham explained that the abutters that are affected by the mechanical noise at the site are to the south and to the east. The barriers that are highlighted are solid noise barriers. To the face of that noise barrier and to the face of the existing building on the backside there is sound absorbing material to block and absorb the sound. The Tech Environmental report has submitted a response. In addition to that at the request of the Building Committee and Symmes Maini & McKee noise surveys have been done at the existing site. Mr. Markham pointed to the location of the noise barriers on the plan and explained the noise measurements that were done at the existing site. The project is expected to meet the

Town of Billerica Noise By-Law and the MassDEP Protection Noise Policy both in daytime and nighttime. Mr. Markham explained that one chart showed the ambient sound pressure levels and the other chart showed the ambient and projected sound pressure levels at the property lines. Mr. Markham asked the Board if they had any questions.

Mr. Kane asked is the delta based on utilizing with or without the sound barrier material.

Mr. Markham replied with the sound barrier material

Mr. Kenyon stated that the plywood sound screens are not recommended so will you be using metal.

Mr. Markham replied yes, the noise barriers that will be used in the project are a product by the Industrial Acoustics Company (IAC) called noise shield. It is a two (2) inch thick material that is applied to the inside of the shield.

Mrs. Giroux asked have any studies been done at other schools to see what their noise levels are.

Mr. Markham replied yes. Acentech along with Symmes Maini & McKee and architects as well have done a lot of work throughout the State of Massachusetts for K-12 schools. The MassDEP noise guideline has been a benchmark for Zoning Boards and Boards of Health throughout the state. It is quite typical for local municipalities to have their own noise ordinance. The noise ordinance that the Town has is consistent with other schools around the state. The noise that the school is expected to produce at these property lines is not extraordinary and off the charts. It is typical to make that kind of noise for a large school project. Our job is to mitigate the noise to the inside of the building and to make sure that the classrooms are not noisy. Our job is also to mitigate the noise to the neighbors.

David Kinsella, 28 Andover Road, identified himself. Mr. Kinsella explained that he is on the Planning Board. Mr. Kinsella asked if they have factored into the calculations the user noise.

Mr. Markham replied no, user noise is not part of this calculation.

Mr. Kinsella stated that kids at play, buses and cars coming and going create a lot of noise. If you are asleep in the morning and the buses are running it is pretty noisy.

Mr. Markham explained that the Massachusetts Noise Policy does not extend to vehicular traffic nor does the Town's By-Law. Those noises have not been taken into account.

Mr. Kinsella asked has the building design and its effect on the neighbors been taken into account.

Mr. Markham asked are you referring to the bus noise.



Mr. Kinsella asked what measures are being taken to soften the noise around the perimeter for the abutters. There will be an increase in students by approximately 200 so there will be more buses and more cars.

Mr. Warren replied there is a perimeter of landscape vegetation that will mitigate some of that noise. There will not be any wall barriers.

Mr. Kinsella asked if the landscaping plan has been presented.

Mr. Warren replied that the landscaping plan was part of the application to the Board of Health.

Mr. Kinsella asked about the discharge to River and Parker Street and will the infrastructure handle the additional discharge from the site. Isn't our water supply at the base of the potential discharge and couldn't the water supply get contaminated? Will there be any kind of safety barrier placed around the detention pond so that children at the school could not have an accident. Mr. Kinsella stated in reviewing the report provided by Woodard & Curran it stated that the traffic is appropriate for use. Does that mean there will be more trips per day? Could that statement be clarified? As for the noise could all the equipment be pushed closer to the front of the building?

Mr. Warren replied the units have been located over the corridors, which will be less intrusive to the classrooms.

Mr. Kinsella stated they could be moved out of the way.

Mr. Warren stated there is a concern about the location of the basin and the potential impact on the water main for the project. Mr. Warren explained the proposed water line for the school will be a new eight (8) inch water main located next to the existing ten (10) inch water main on River Street and the existing six (6) inch water main on Pages Court. The direct impact to the school is minimal. The detention pond will be completely enclosed with a four (4) foot high chain link fence. It will include buffer planting around the backside. After a twenty-four (24) hour storm event this pond will be fully drained within twelve (12) hours. It will peak and then it will slowly start to discharge. At the base of the dry detention pond there will be a fourteen (14) inch pipe so it will drain quickly. The appropriate use comment that was made was a general comment about the parking spaces.

Mr. Stearns explained that the statement was in reference to Pare Engineering's letter about the peak hours utilized in the analysis. In the traffic analysis they used 7:45 a.m. to 8:45 a.m. as peak time.

Mr. Kinsella stated my question is will there be an increase in traffic flow. I think the answer is yes however, the report does not state that.

David Mackwell, 10 Blanchard Avenue identified himself. Mr. Mackwell stated that he had a couple of questions regarding the Board of Health variance requests. Mr. Mackwell asked if the school was to be built in the same location that it is now would you need a variance for groundwater.

Mr. Warren replied we would have to do a revised grading plan and he could not make that determination without the floor elevation finished plan.

Mr. Mackwell stated if they did not regrade the driveway and raise the existing elevation five (5) feet they would not need the other variance. The calculations show that the total peak runoff rate is being reduced for this project. The runoff to River St will be reduced. Will the Parker Street infrastructure runoff rate be decreased as well?

Mr. Warren replied yes that is decreased through the basin and the infiltration system.

Mr. Mackwell asked are you taking credit for the water seeping into the ground or do you have extra volume.

Mr. Warren replied it is the straight volume.

Mr. Mackwell asked is there more than one recharge system.

Mr. Warren replied there is only one recharge system.

Mr. Mackwell asked is the project being considered a redevelopment project.

Mr. Warren replied this project does not qualify to be a redevelopment project.

Mr. Mackwell asked do the Board of Health regulations apply to this applicant for the stormwater standards.

Mr. Berube replied the applicant has to comply with the stormwater standards.

Mr. Mackwell talked about the stormwater standards, the requirements and the impervious area. Mr. Mackwell also talked about the drainage. His concern is that at the lowest point of the site the runoff does not come down the road. Mr. Mackwell stated that he read the Zoning By-Laws and all projects over 5,000 square feet have to go for a site plan review. This is the only public hearing for this project. The proposed building height is over fifty-three (53) feet. This property is in a residential district with zoning for thirty-five (35) feet. This building is a three-story intensity of use. There will be a 20-40 percent increase in students. This is a big project on a small site. There is a change in grade and the height of the building goes up fifty (50) feet. The designers have done a good job but are being a little to aggressive. I am sure the questions that we have the engineers can address.

Mr. Warren replied we asked the applicant to provide the recharge calculations. Mr. Warren explained the need for the variances.

Joanne Sprague, 24 Pages Court, identified herself. Ms. Sprague asked will there be some kind of a timer for the lighting in the parking lot to shutoff. Will there be trees around the perimeter of the fifty-seven (57) foot building that I am going to be looking at everyday? When you fix the driveway towards River Street what will happen to the pipe that runs across that area. There will be a lot of noise from the buses driving through Pages Court during the construction and demolition phases. Is there going to be a basement in this building?

Mr. Warren replied the site lighting will use LED fixtures that go on and off at scheduled times. Mr. Warren pointed to the plans and explained the traffic flow for the buses through Pages Court during Phase II.

Ms. Sprague asked who is going to be monitoring Pages Court and allowing buses only to drop off students.

Joel Seeley, Symmes Maini & McKee, introduced himself. Mr. Seeley explained that there was a meeting with the sub committee, which consisted of the Police Department, Fire Department and the Building Committee to discuss how the traffic flow would be handled. The Billerica Police and the crossing guards will make sure the traffic flows smoothly. Mr. Seeley explained the flow of traffic for the buses for pick up and drop off for the fall semester. Mr. Seeley explained that the traffic flow will go in one direction for both pickups.

Mr. Kane asked how long will the demolition take.

Mr. Seeley replied Phase II is scheduled to start September 2012 and end November 2012.

Mrs. O'Rourke asked is there any other recourse the buses could use. Is there another street that the traffic can be directed towards?

Someone in the audience (Richard Silva) stated that Pages Court is a private way from the stonewall near the school to Concord Road.

Mr. Warren explained and pointed to the landscape plan that was included in the Board of Health's application. Mr. Warren explained that there will be a meeting scheduled to discuss the landscaping with the Building Committee and then there will be a follow up site walk for all direct abutters to see where the evergreen trees will be planted on the property.

Ms. Sprague asked about the driveway.

Mr. Warren pointed to the plans and explained that a section of the existing culvert will be replaced. The added load on that pipe from the widening of the walkway will be negligible from an impact standpoint. There will be no basement in the proposed building.

Jean Roche, 40 River Street, identified herself. Ms. Roche asked about the replacement of the pipe that goes under the existing driveway. When the driveway is widened and the pipe is connected it will be attached to an already failing system. Will there be an impact to the residents on River Street?

Mr. Warren replied there will not be an impact from a stormwater design standpoint. Mr. Warren pointed to the plans and explained that section of the pipe in the driveway is not going to be replaced. Mr. Warren explained the section that is going to be replaced is on the school property.

Mrs. O'Rourke stated this will be the last resident to speak.

Ed Reiner, 1 Pinewood Avenue, identified himself. Mr. Reiner talked about the water situation, dead trees and the drainage on River Street. Mr. Reiner recommended that the drainage on River Street be addressed.

Mrs. Giroux asked for Richard Berube, Director of Public Health's recommendation.

Mr. Berube stated that we have heard a number of concerns regarding this project and there are probably many more that we have not heard from yet. If there are additional concerns I urge you to contact the Board of Health office either by phone or email. I recommend to the Board that we continue the hearing until some of the questions raised by the abutters have been answered. I would like to schedule a meeting with the applicant's engineer, the Board of Health's consulting engineer and Department of Public Works to address some of the concerns that were raised tonight by the abutters.

Mrs. Giroux made a motion to continue the hearing until the questions have been answered.

Mr. Reader seconded. So voted unanimously.

**8:30 p.m. Mall News – 480 Boston Road – Continued Show Cause Hearing for Variance Revocation**

Mrs. O'Rourke stated the next item on the agenda is Mall News, continued Show Cause Hearing for Variance Revocation.

Mr. Berube explained that the Board requested to reconvene this hearing concerning the variance for the freestanding displays at Mall News. At a recent meeting Dan Kane and Sandra Giroux expressed their concerns regarding the variance for the freestanding displays. At this time we have not heard back from the Attorney General's (AG) office however Health Agent, Angela Braun has been in contact with DJ Wilson and is present tonight to provide us with his comments.

Mrs. Braun explained that due to the request of the Board she contacted DJ Wilson with Mass Tobacco Association via email and he responded that he has not received a response from the Attorney General's office. He did not know when he would receive a response so he suggested if the Board does not know what to do about the displays they can vote on it as they please.

Mr. Kane stated that he heard from Sarah Moriaty, Director of Tobacco Control at the Mass Health Officers Association and she informed me that she was waiting to hear back from the Attorney General's office as well. Their opinion is that the Town can put into effect any law or regulations that they chose however whatever the most restrictive one is the one that applies.

Attorney Dangora replied that in 2008 the Board voted to continue the hearing until they heard from the AG's office. Attorney Dangora stated that he disagrees with the opinion of DJ Wilson and the Board on the regulations. The language is very clear and unambiguous. In regulation 940CMR22.07 it deals with the distribution of cigars and states that nothing in this CMR shall be construed to preempt any existing law, ordinance, by-law, regulation or rule which requires a permit or a license for the sale of tobacco products or which regulates the sale, use or distribution of tobacco products. It wasn't the intent of the AG's regulations to create anything that already existed. Mr. Grande has been doing business under this variance since 1996. These rules came into effect in 2000. It became an issue with the Board in 2008. Clearly it was not the AG's intent to preempt what was in place and the variance that was granted to Mr. Grande in 1996. It has been two (2) years and a response has not been received. In general your comment is correct but when you look at the regulation it could mean something different.

Mr. Kane asked Attorney Dangora to finish reading 940CMR22.07.

Attorney Dangora read the regulation in cases where ordinances, regulations or by-laws are more restrictive than the provisions it shall control to the extent of any inconsistency. If a local by-law is more restrictive then the State supercedes the local regulation. So this takes a back seat to the local by-laws if it is more restrictive. In cases where the ordinance is more restrictive the local controls not the AG's regulation. Attorney Dangora stated the more restrictive controls.

Mr. Kane stated so if the Board of Health's law is less restrictive then the State's law applies.

Attorney Dangora stated the more restrictive controls. Attorney Dangora replied you have to read the entire regulation. The Board of Health has rules and regulations and by-laws in place for the sale of tobacco. The Board of Health has a variance that is unique.

Mr. Kane stated that is a big assumption if my reading is incorrect then they would have responded. Mr. Kane stated the new FDA regulations, which are for cigarettes not cigars goes into effect in July 2010. It appears that he is in compliance with the new FDA regulations for cigarettes but not for cigars. That is what prompted this review and we have not heard from the AG's office. A variance is a variance and that does not mean it lasts forever.

Attorney Dangora stated there has not been any complaints. Mr. Grande is a small business owner trying to make a living. Two (2) years ago Mr. Grande told the Board that he has been looking for a new space in the mall but that does not seem to be going anywhere. In 2009 Mr. Grande asked Mr. Berube what he would have to do to comply with the Board of Health Regulations once he was able to relocate to a new space. This is not a variance that is going to last forever. The Board granted a variance and Mr. Grande has relied on it. Under the Board of Health Regulations you need to have a just cause to take the variance away.

Mr. Kenyon asked can the variance be taken away if there is an infraction.

Attorney Dangora replied whatever the Board determines is just cause. Attorney Dangora asked has there been any complaints.

Mr. Berube replied not that he is aware of.

Mrs. Braun stated there was one illegal sale to minors.

Mr. Grande asked how long ago did that sale take place.

Mrs. Braun replied she was not sure maybe 2006 or 2007.

Mr. Kane asked how often are compliance checks done.

Mr. Grande replied that he does not know when they come in the store but he has not been written up for anything since 2005 or 2006.

Mr. Kane asked have you received any reports that state you have passed the compliance checks.

Mr. Grande replied not in the past few years.

Mr. Berube explained that he would not receive any reports from tobacco control because tobacco control no longer exists.

Attorney Dangora stated what is the agenda tonight.

Mr. Kane stated at this point I would like an opinion from the Attorney General.

Mrs. O'Rourke asked what would happen if the Board revokes the variance and Mr. Grande has to enclose the tobacco products on the back wall. Is that a big hardship?

Mr. Grande replied it is not a big hardship but I would have to spend money to build new cases for the tobacco products. Then I will have to spend money again when they do the mall over and I have to move. I met with Richard Berube and Angela Braun and asked them what I would have to do to

comply with the regulations when I have a new space. I am just waiting for the mall to do something. Some architects and engineers have been doing work but I have not heard from the owners in New York since November 2009. So we do not know what is going on. I will have to do something when they reconfigure the mall. It will not put me out of business. It is not a hardship but I do not want to spend the money now and have to spend the money in the future when I move. Have there been any complaints against my business? Have I done something wrong?

Attorney Dangora explained that Mr. Grande has been going back and forth with the owners for two (2) years.

Mrs. O'Rourke asked has there been any problem with the freestanding display.

Mr. Grande replied no. No one under the age of eighteen (18) can go in the back of the store. We have an agreement and why can't we wait for the mall to be completed and then I will spend the money to build the cases. Mr. Grande asked the Board if he has done something wrong?

Mrs. Giroux explained this is not against Mr. Grande personally it is the concept that minors have access to the open cases of the tobacco products and cigarettes.

Mr. Grande stated it is not cigarettes it is only cigars.

Mrs. Giroux replied it is the concept in general and the fact that this variance has been going on for awhile.

Mrs. O'Rourke stated that there have not been any problems.

Mr. Kane explained the reason that he is concerned and why he feels that the variance should be revoked. Mr. Kane explained that he is just recognizing that the rules are changing and we are here to enforce the rules. The issue is not about Mr. Grande it is about how we follow and enforce the rules and the law.

Mrs. O'Rourke asked one of the Board Members to make a motion.

Mrs. Giroux made a motion to sustain the variance until an opinion from the Attorney General's Office is provided or there is a change in the operation or relocation of the establishment.

Mr. Reader seconded. Three voted in favor, one vote opposed (Dan Kane).

**8:40 p.m. New England Restrooms – Appeal Hearing for Notice of Violation Order for Correction**

Mrs. O'Rourke stated the last item on the agenda is an appeal hearing for New England Restrooms for a Notice of Violation Order for Correction.

Mr. Berube explained that he received an email from Attorney David Hoey, requesting that Mr. Harris's hearing be continued because of scheduling conflicts that have arisen and would make it impossible for Attorney Hoey to be present. Attorney Hoey requested that Mr. Harris's hearing be continued to a later date.

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

The Board adjourned at 10:45 p.m.

Respectfully submitted,

Sandra Giroux  
Secretary

Joanne M. White  
Recording Clerk