

**BOARD OF HEALTH MINUTES  
JULY 12, 2010**

Marie O'Rourke, Chair called the meeting to order at 7:00 p.m. Also in attendance were Robert Reader, Vice Chair, Sandra Giroux, Secretary, Fred Kenyon, Daniel Kane, Richard Berube, Director, and Joanne White, Recording Clerk.

**ACCEPTANCE OF MINUTES**

Mr. Kenyon made a motion to accept the Meeting Minutes of June 7, 2010. Mr. Reader seconded. So voted unanimously.

**BOARD OF HEALTH BUSINESS**

**Reorganization**

Mrs. O'Rourke stated the first item under Board of Health Business is the Reorganization of the Board. At this time Mrs. O'Rourke turned the meeting over to the Secretary, Sandra Giroux.

Mrs. Giroux stated that she would accept nominations.

Mr. Kenyon made a motion to leave the structure of the Board of Health the same, Marie O'Rourke, as Chairman, Robert Reader, as Vice Chairman and Sandra Giroux, as Secretary.

Mr. Kane seconded. So voted unanimously.

**Health Department Activity Report**

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

Mr. Berube explained that Angela Braun submitted an activity report for the month of June, 2010. There were three (3) food complaints. The first food complaint was regarding Nana Japanese Steakhouse. Four (4) turtles were observed in a former fish aquarium in the lobby. Turtles are prohibited in restaurants in Massachusetts according to the Food Code, 6-501.115 because they may carry Salmonella. An order was issued to remove the turtles from the restaurant. The owner took the turtles back to the pet store. The second food complaint was for Kentucky Fried Chicken. A foodborne illness was reported by a resident who ate 2 chicken wraps and a famous bowl. The complainant did not seek medical attention. Angela Braun conducted a routine inspection of the facility and could not find anything to support the complaint. The third food complaint was for Wendy's. The complainant stated that he became sick forty (40) minutes after consuming two (2) burgers. The customer felt that the Wendy employees deliberately tampered with his burgers. He claimed that he went to two different hospitals however we could not find any information to support his claim. Angela advised the complainant to contact the police and a lawyer if he felt that the employees tampered with his food.

A resident complained about the High School restrooms being locked and not available for students. There is an ongoing issue with vandalism and smoking in the high school restrooms. The restrooms are being totally destroyed. The School Administration has decided to unlock a couple of sets of restrooms during classroom hours. This problem has been going on for quite some time. Angela will continue this investigation and ask for a copy of the restroom procedures. The Health Department received a complaint that some needles were left by the side of the road on Salem Road. Angela Braun picked up the loose needles and disposed of them properly. The last week of school we received a complaint that there were no latches on the restroom stalls at the Parker School. That was brought to the attention of Frank Antonelli and he was going to look into that situation. Angela emailed the complaint to the principal and he will also check out that problem. We have received complaints regarding the smell of mold and toxin odors at the Billerica Mall. Upper management from the Building, Health and Fire Departments is handling this complaint. Burlington Coat Factory will be doing major renovations starting in July. The renovation project will cost about two to three million dollars. Mr. Berube stated that he heard another health club will be opening in the mall. Plans have been submitted to Mike Kinney, Inspector of Buildings for the renovations of the mall. All the vegetation has been removed along the front of the mall and the plan is to convert to store fronts.

Mr. Reader asked who is paying for the renovations to Burlington Coat Factory.

Mr. Berube replied Burlington Coat Factory is paying for the renovations. Mr. Berube stated that the renovations would take care of some of the complaints that the Health Department has received about Burlington Coat Factory.

Mr. Reader asked are they doing any work at Papa Gino's or any of the other establishments.

Mr. Berube replied at this time the plans are still up in the air about the future of those establishments. Mr. Berube explained that the work at the mall should be starting soon. The plan is to install a drop ceiling and redo the entire ventilation system.

Mr. Berube explained that Angela Braun and Christine West, the Public Health Nurse have been conducting inspections of the recreational camps. Four (4) recreational camps have opened. Parlmont Park Apartments has renovated their pool and the pool now complies with the new pool regulations. The pool opened on June 30<sup>th</sup>. Naked Fish is closed and undergoing renovations and should be opening soon as La Casa De Pedro. The new owner should be calling for a pre-operational inspection in the near future.

Mrs. O'Rourke asked if Health Agent, Phavy Pheng submitted a report.

Mr. Berube explained that Phavy Pheng is on vacation. There are still ongoing trash and housing complaints. As for the failing septic system at 78 Pinedale Avenue, an agreement could not be reached when we went before the clerk magistrate. A couple of the owners have resisted coming to an agreement. This case will be going to criminal court.

Mrs. O'Rourke stated so the failing septic system has not been fixed.

Mr. Berube replied the septic system has not been fixed however Mr. Mitchell is pumping out the system on a regular basis and providing the Board of Health with the receipts. They are still trying to work things out with the other owners.

Christine West, the Public Health Nurse is still giving out vaccines, there is a few dosages of the shingles vaccine available. Christine is also doing communicable disease reporting. Christine has completed MAVEN (Massachusetts Virtual Epidemiology Network) training and will be doing all communicable disease reporting online that will provide Christine with a quicker response from the State. We have purchased four (4) Automated External Defibrillators (AED) with the grant money that we received from the State. One will be installed in the Town Hall, one at the Library, one at the Hallenborg Ice Rink and one will be portable for the Nurse to take when there is a clinic. We also purchased extra wheelchairs for residents to borrow. We plan to develop a loan program for these residents.

### **Miscellaneous – Next Month**

Mr. Berube explained that 17 Waterview Avenue will probably be coming back before the Board at the next meeting. The Board granted them a variance to rebuild a house in the flood plain. Originally they were supposed to use the existing foundation but the existing foundation collapsed so they poured a new foundation. When it was brought to my attention I went to the site and confirmed that a new foundation was poured which is in violation of our Order of Conditions. So they will probably be coming back before the Board next month.

Mr. Berube explained that Zackney Estates Subdivision will also be coming before the Board at the next meeting. Zackney Estates is requesting a re-issuance of the subdivision approval. The approval expired and they are ready to build some houses now. When they received approval the market crashed and they were not able to build any houses. Mr. Berube asked if the Board Members had any questions.

The Board Members did not have any questions.

**Mosquito Control Program Update**

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

Mr. Berube explained that there have been no known cases of the West Nile Virus to report on in Billerica. The only case that he is aware of is in North Andover. Central Massachusetts Mosquito Control personnel will be in Billerica on the following dates: July 15, 21, 27 and August 1. A notice about the spray schedule is posted on the CMMCP phone system each day and also listed on their website.

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

The Board Members did not have any questions.

**Vacation Schedule**

Mrs. O'Rourke stated the next item on the agenda is Richard Berube's Vacation Schedule.

Mr. Berube explained that he will be on vacation from July 19th through July 23, 2010. Health Agent, Angela Braun will be in charge of the office. If there are any problems I can be reached on my cell phone.

Mrs. O'Rourke asked Mr. Berube what were his plans for vacation.

Mr. Berube explained that he will be going to Washington D.C. and will meet up with his parents and do some site seeing.

The Board Members told Mr. Berube to enjoy his vacation.

**AGO Open Meeting Law**

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

Mr. Berube explained that a copy of the Attorney General's Open Meeting Law Guide is included in the Board's package.

Mrs. O'Rourke asked if the Board Members had any questions. Mrs. O'Rourke introduced Town Counsel, Pat Costello to the Board Members. Mr. Costello is present to answer any questions that the Board may have.

Mrs. Giroux stated that at one of the other meetings it was said that the Open Meeting Law was not going into effect right away.

Mr. Costello explained that the Open Meeting Law went into effect July 1, 2010. The senate took action to extend the deadline to November 1, 2010 however it was never approved by the house and the governor so it lapsed. Mr. Costello explained that the Attorney General's Office circulated the draft form of the regulations and they will be approved by November 1, 2010. If any of the Board Members has any comments or concerns regarding the regulations they can notify Maratha Coakley's Office. The new Open Meeting Law as in Chapter 38 is in effect right now. The major changes are that the agenda must be more definitive and posted in a legible, easily understandable format and contain the date, time and place of the meeting. The list of topics must be specific to reasonably inform the public of the issues to be discussed at the meeting. When entering into an Executive Session you have to state the reason for the Executive Session and state all subjects that may be revealed without compromising the purpose for which the Executive Session was called. All minutes must be accurately kept and approved in a timely manner. The law requires that the existing minutes be made available to the public within ten (10) days whether they have been approved or remain in draft form. The minutes, documents and exhibits are public records and are a part of the official record of the meeting. The Attorney General's Office has taken over supervision of all open meeting issues and they can take enforcement action where they deem appropriate. This is going to be a very sensitive process given the changes. There will be no heavy handed enforcement activity over the first six months or year. The information that Mr. Berube has given the Board is fairly comprehensive and should provide adequate explanations and details.

Mrs. O'Rourke asked what prompted this.

Mr. Costello explained that there were a lot of corruption and illegal activities going on at the State level. What they did rather than just address the State government, they did it through a full revamping of the Open Meeting Law at both State and Municipal levels. There were separate statutes governing the State Open Meeting Law and Municipal Open Meeting Law. Now they have been combined into a single statute in Chapter 38A. A lot of the things that have been going on in Beacon Hill prompted this review.

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

Ms. White asked where in the minutes should it be documented about plans, submittals or exhibits that are being referenced at the meeting. Should it be documented at the beginning of the hearing?

Mr. Costello replied that statement has prompted a lot of confusion. The Attorney General's regulations will address that specifically. The New Open Meeting Law requires that any and all documents, plans or submissions have to be maintained by the each Board, Commission or Committee and should be part of the minutes. I recommend that all documents, plans or submittals be itemized in the minutes that way you would be able to check all the information. All Boards should maintain a

copy of their submittals. If the Town Clerk had to maintain all the plans, documents and submittals that every Board generated it would be an onerous task. All Boards, Commissions and Committees in Town will have to maintain a repository of all documents. If someone should request those documents that are referenced in the minutes then you will have to provide them with a copy of the documents.

Mrs. O'Rourke stated so if someone requests a set of plans, how could we do that.

Mr. Costello replied the Board of Health would have to make them available for inspection and if they want a copy they would have to pay the standard fee for assembling and copying. If the plan has to be sent out to be copied then a reasonable fee can be charged.

Mr. Berube commented that will not be a problem because everything that comes before the Board is kept on file.

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

The Board Members did not have any questions.

### **McFarland Cascade Progress Report**

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

Mr. Berube explained that included in the Board's package is a copy of the latest report from McFarland Cascade, in addition there is a copy of the report from GZA. GZA is doing the Massachusetts Contingency Plan (MCP) work for McFarland Cascade. Mr. Fitzgerald's report states that all the poles, and skids that have been used as bins for the poles have been removed from the site. The focus is now on the remediation work. The goal is to have the process completed by October 2010. The report from GZA states that there is No Significant Risk of harm. Mr. Berube stated that he is surprised that the conclusion states that there is No Significant Risk of harm exists at the site. Mr. Berube explained that he is going to follow up with the Department of Environmental Protection (DEP) about GZA's conclusion. He would like to get DEP's opinion as to what has been discovered at the site.

Mrs. O'Rourke asked the Board Members if they had any questions about the report from GZA.

Mrs. Giroux asked if there have been any complaints.

Mr. Berube replied no. Mr. Berube explained that included in the Board's package is a copy of the Water Quality Report from the Department of Public Works Water Division. One of the questions that were raised during the McFarland Cascade hearing was about the potential of PCP getting into our water source. If PCP did get into our water supply it would have been listed in this report.

Mr. Reader asked who paid to have this report done by GZA.

Mr. Berube replied McFarland Cascade.

Mrs. O'Rourke asked Mr. Kenyon if he had anything to add to the report from the Water Conservation Committee.

Mr. Kenyon replied that he was disappointed that Town Meeting rejected the installation of the new water meters. It only lost by a small margin. After Town Meeting was over several people came up to me and wished they had voted for the new water meters.

Mrs. O'Rourke stated they were confused because of the presentation. Mrs. O'Rourke asked Mr. Sampson if he had any questions.

Mr. Sampson requested that the report from McFarland Cascade and the report from GZA be posted on the Town of Billerica website. Mr. Sampson stated that he was just as surprised as Mr. Berube that they had clear findings in their conclusion.

Mrs. O'Rourke asked Mr. Karamanian if he had any questions.

Mr. Berube replied that he wonders if they went far enough in their evaluation of the site.

Mr. Karamanian asked if the samples were recent and were the samples taken from the same location as the last time.

Mr. Berube replied that he does not know. Mr. Berube stated this report does not have any maps indicating where the samples were taken from. Mr. Berube explained that he has quite a few questions about this report that he would like to talk to DEP about. Mr. Berube informed the Board that he would contact DEP and discuss GZA's report.

### **OM Temple – Request for an Extension of a Variance**

Mrs. O'Rourke stated the last item is the OM Temple, requesting an extension of a Variance.

A copy of the old and new plans for the OM Temple were presented to the Board Members for review, along with a copy of the original Covenant for Variance, a plan that was approved by DEP and a letter from Attorney Brodsky requesting an extension and amendment of a variance.

Mr. Berube explained that in the Board's package is a copy of the original approval, a copy of the plan that was approved by DEP and a letter from Adam Brodsky requesting an extension and amendment to the original variance. I think the Board needs to make the determination whether or not they want to address this as an extension or a new filing should be required. Mr. Berube asked the Board Members if they had a chance to look at the new plans.

The Board Members reviewed the new plans.

Mr. Berube stated that Adam Brodsky is present tonight to answer any questions the Board may have.

Adam Brodsky, Environmental Lawyer working with OM Temple, Inc., introduced himself. Attorney Brodsky introduced Tej Tanden, Trustee of OM Temple, Inc. Kanayo Lala, Design Engineer and David Kelly, PE of Kelly Engineering. We are requesting that the Board further extend the variance that was issued for this project in 2005 and amend the variance to adopt the plans that were recently approved by the Department of Environmental Protection (DEP). The Board of Health originally granted the variance for a larger project that was located entirely within the FEMA Flood Plain. Attorney Brodsky explained that by going through the DEP process we have shrunk the footprint of the project so that it is entirely out of the FEMA Flood Plain so there will be fewer impacts to the flood plain with the revised plan. David Kelly is present tonight to explain what was originally approved and what DEP recently approved and explain the differences between the two (2) plans. Heidi Davis, DEP and Markus Pinney of the Director of Environmental Affairs for the Conservation Commission have approved this new plan. A lot of work has gone into the redesign of this project. We presented Mr. Berube with a comprehensive stormwater management report. We have no opposition to a public hearing to consider the amendment. We are asking the Board to consider this as an amendment rather than a new application since this project has been reviewed so many times.

David Kelly, Kelly Engineering Group, identified himself. Mr. Kelly explained our group was brought in to work with Kanayo Lala on the stormwater management aspect of the project. Mr. Kelly pointed to the plans and explained the area of Boston Road and the elevation line of 116.5 and also pointed to the Green Engineering Flood Plain elevation at 119.5. The majority of the project is within the Green Engineering Flood Plain. Mr. Kelly pointed to the plan that was originally approved and explained we will be using the same driveway. As you enter the site there is a long driveway, we have taken the building and brought it closer to the street. The building footprint size is reduced from 8,100 square feet to approximately 5,400 square feet. The distance from the bank of the river was 80 feet and now it will be approximately 660 feet. Approximately 43 parking spaces were within the FEMA Flood Plain now only 10 spaces will just touch the FEMA Flood Plain. In both plans the proposed building will be at elevation 121 which is two (2) feet above the Green Engineering Flood Plain elevation. All mechanical systems are designed to be above the Flood Plain. We provided the Board with the compensatory storage calculations that demonstrate that the project will have no impact with regards to flood storage within both flood plains. We have tried to match the grade in the areas outside the flood plain. There is a compensatory storage area located under the building that offsets the FEMA elevation and the Green Engineering Flood Plain elevation. One of the biggest changes in this plan is the stormwater management which we will provide vegetated swales as opposed to closed drainage systems. This project encompasses many of those features including a vegetated swale along the side of the street and porous pavement for the parking. In addition there is a detention area and a recharge area along the site. We have met each of the DEP requirements for stormwater management. In summary the project was compressed by almost 50%. The proposed building is reduced in size and will be located farther away from the river. We observed this sight when we had the big storms in March and we found the FEMA flood elevations were very accurate. This was a good test for what we are proposing for this project. If the Board has any questions, I will be glad to answer them.



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

Mr. Kane stated that he agrees that this proposal will have significantly less impact than the original project. I am concerned because this is a little more than just an amendment. This is not an extension of the previous variance this is a redesigned project. From the perspective of the abutters this is a different project and should come before the Board and abutters for a public hearing before the Board can make a decision. A new application should be submitted for this project.

Mr. Kenyon stated he agrees with Dan. This is a totally new plan and not an amendment. There should be a public hearing and abutters should be involved to see if there are any drastic changes that will affect them.

Mrs. Giroux stated that she agrees that there should be a public hearing. There could be an impact because the project has been condensed into a smaller area than the original plan. It does have an effect on the abutters. The abutters should be present at a public hearing to see the new plan. There have also been some regulation changes they may need to be addressed.

Mr. Reader asked how close will the proposed building be to the Department of Public Works yard.

Mr. Kelly replied the proposed building will be 35 feet away from the DPW yard because that is what the zoning setback requirements are.

Mrs. O'Rourke explained that she agrees with the rest of the Board Members because the plan has changed more than 50% and there have also been some changes to the Board of Health's regulations. I agree that there should be a public hearing and this should be a new filing. I cannot grant a variance on a plan that has so many drastic changes.

Mr. Berube explained that a new filing is not out of the ordinary since we granted the previous extension. It was extended until the Department of Environmental Protection (DEP) granted approval for the project. At that time they had to resubmit the variance. The extension has expired. I think in the best interest a new filing is the best way to go considering all the changes that have been made to this project.

Attorney Brodsky explained we followed the route that we believed was the best way to go. The amendment seemed to be the way to go. Given the fact that so many people have reviewed this project we were hoping to avoid the cost of another review. We thought the Board of Health wanted us to request an amendment.

Mr. Berube explained that regardless of the decision the Board makes tonight on how they want to proceed with this project, a Peer Engineering Review will still be required. That is definite.

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

Mr. Costello explained that on January 14, 2009 the Board granted a second extension of the variance and the construction had to be completed in two (2) years. What the Board voted was to grant the above referenced variance until such time that DEP grants approval for the OM Temple Project. At that time, you must submit a new request for a variance extension along with a copy of DEP's written approval and a complete set of the plans approved by DEP. The extension would be granted when the DEP matter was resolved. Then OM Temple would submit to the Board the plans and specifications with the changes. Regardless whether this is an amendment to the existing variance or a new application a public hearing will be required. The variance granted in 2005 specifically references that the Town's Consulting Engineer reviewed the plans submitted as of that date and approved them in the Findings of Fact. If the plans are going to be altered the Board would want to look at the revised plans. In the Variance, Condition #1 states that all constructions must be in accordance with plans submitted for review and approval, prepared by Kanayo Lala dated October 7, 2002 and April 8, 2004. Condition #3 states that any changes to the plan submitted shall require immediate notification to the Board of Health and further review and approval may be required at that time which is what the applicant has done. Condition #7 states that 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. Even substituting plans would require a public hearing. The Board still has jurisdiction over this matter. Most of the technical work has been done at this point. The Board's Consulting Engineer would review the plans and comment on them.

Attorney Brodsky asked Mr. Berube what additional information will you need for us to file a full application.

Mr. Berube replied you have submitted most of the supporting documentation needed. All you need to do is fill out an application, then make arrangements with the Board's Consulting Engineer for a peer engineering review. Once the Board of Health receives the report I will schedule a hearing.

Attorney Brodsky asked would it be appropriate for us to withdraw the motion at this time or does the Board want to take action.

Mr. Costello explained that if the applicant wants to withdraw the extension and amendment then there is nothing for the Board to act on. This variance would lapse and the Board will not have to deny the extension and amendment.

Mrs. O'Rourke informed Attorney Brodsky if his client would like to withdraw the request for the extension he could.

Attorney Brodsky stated that he would like a couple of minutes to talk with his clients.

Mrs. O'Rourke granted them some time to discuss their decision.

Attorney Brodsky stated with the Boards permission the applicant would like to withdraw the request for an extension and amendment. They would like to file a new application with the Board of

Health. Attorney Brodsky stated that he would talk to Mr. Berube and file a new application.

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

The Board adjourned at 8:00 p.m.

Respectfully submitted,

Sandra Giroux  
Secretary

Joanne M. White  
Recording Clerk