

**BOARD OF HEALTH MINUTES  
AUGUST 9, 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**

Mrs. Giroux made a motion to accept the Meeting Minutes of June 28, 2010. Mr. Kenyon seconded. Four voted in favor and one vote abstained (Dan Kane).

Mr. Kenyon made a motion to accept the Meeting Minutes of July 12, 2010. Mrs. Giroux seconded. So voted unanimously.

**BOARD OF HEALTH BUSINESS**

**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 Health Agent, Angela Braun submitted an activity report for the month of July. Angela conducted thirty-five (35) routine food establishment inspections and re-inspections, nine (9) pool inspections and one (1) camp inspection. The Belly Buster Diner had nine (9) critical food violations which is unacceptable. Angela and I had an enforcement conference with the owner, Armando Nushi to discuss the issues, corrective actions and enforcement. We informed the owner that if he did not take care of these issues we could possibly take further action and suspend their license to operate. We advised him to get additional training for his staff.

Mrs. Giroux asked how long would it take to turn things around and take corrective action before they have to report back to the Health Department.

Mr. Berube explained that Angela will conduct special inspections and a special inspection fee will be charged. Within the next two (2) to three (3) months they should be back to running smoothly.

Mrs. Giroux asked is this situation similar to another restaurant that was recently closed down. That restaurant hired a consultant to work with the staff.

Mr. Berube replied they were given the option to have a consultant come in and work with the staff or send their staff to an outside company for training. They chose to have their staff go to an outside company for training.

Mr. Reader asked weren't they just closed for a couple of weeks to do some renovations.

Mr. Berube replied no, they closed because the owner got married. They have been made some improvements to the dining room area. They replaced some of the counters and renovated the bathrooms. They need to be more on top of the food violations.

Mr. Kane asked when are they scheduled for the next inspection.

Mr. Berube replied they should be signed up for classes before September. During September we will check on them more often.

Mr. Kane stated that he is concerned because these are critical food violations and this is a chronic issue. Giving them three (3) more months of operation with these critical issues is a concern.

Mr. Berube stated follow up inspections will be scheduled. We will stop by frequently to check on the situation.

Mr. Kane asked when is the next inspection scheduled.

Mr. Berube stated he is not sure of the date but the inspections are usually done every two (2) weeks.

Mrs. O'Rourke asked what is one of the critical violations.

Mr. Berube explained that one of the violations is that they do not cool food properly. For example at breakfast time they cook a lot of bacon and leave it sitting around. They are not cleaning the place properly. Angela has seen some evidence of rodent infestation. Hopefully, this training will put them back on track.

Mr. Berube stated that the interior of the Billerica Mall has been gutted from the Burlington Coat Factory to Papa Gino's. There has been an improvement in the air quality.

Mr. Berube explained that there were three (3) complaints. The first complaint was from a resident that purchased frozen clam soup from the Market Basket at 700 Boston Road. The complaint was an isolated case that could not be confirmed and there were no other violations related to this frozen retail product. The second complaint was reported by a family of five (5) that became very ill with flu like symptoms after drinking Market Basket bottled water that was purchased at the 199 Boston Road, Market Basket. This complaint came from the State. There have not been any other complaints so we suspect that the family was probably coming down with a virus. The Health Department received notification from the Wastewater Department regarding a grease blockage in the sewer line on Boston Road between the Emerald Rose and the Newtowne Grille. The blockage is similar to the one that occurred at Kentucky Fried Chicken earlier this year. More than one establishment could be responsible. We are waiting for a report from the DPW Wastewater Division so that we can figure out who is responsible for the blockage. We will use the same approach that we used with KFC and a substantial fine will be charged. We will review with them the practices on how to maintain their grease trap.

Mrs. O'Rourke asked how old the grease trap at the Emerald Rose and Newtowne Grille is.

Mr. Berube replied that Newtowne Grille does not have an exterior grease trap, they have a grease recovery system because they have no land for an exterior grease trap.

Mr. Reader asked if the Newtowne Grille has been maintaining their grease recovery system.

Mr. Berube replied from our preliminary investigation it looks like Newtowne Grille is not maintaining their grease recovery system. As for the Emerald Rose we are still checking our pumping records to see how often they have the grease trap pumped.

Mr. Reader asked if the Newtowne Grille could maintain the grease system themselves.

Mr. Berube replied yes they can maintain the grease trap or they can pay someone to clean it. Once we get the report from DPW we will be able to act on this.

Mr. Berube explained that the Golden Jade, 131 Boston Road, North Billerica has not opened yet. Angelina's, 749 Boston Road closed in May. A new sign has been posted on the building. Angela and I have discussed and agreed that we should not allow another food establishment in this building considering their proximity to the Shawsheen River and the flooding that occurs. I think that is the position we are going to take.

Mr. Reader asked if a fitness center would be going into the mall.

Mr. Berube replied yes, they have signed a lease.

Mrs. O'Rourke commented that she heard a pet store may also be going into the mall.

Mr. Berube stated that he did not hear about a pet store. Market Basket may be expanding and adding a bakery.

Mrs. Giroux asked about the new establishment Piece "ah" Cake .

Mrs. O'Rourke replied that the applicant would be coming before the Board tonight.

Mr. Berube explained that Christine West, the Public Health Nurse has ordered another Automated External Defibrillator (AED) unit. Christine is working with Chief Capaldo to set up training for the AED's as well as CPR training. There has been a rise in whooping cough. It is recommended that adults get the Tdap shot so that they don't spread the whooping cough to the children. Christine will be working with the Head School Nurse, Carol Butze to schedule clinics to vaccinate school children. There will also be a whooping cough clinic for adults.

Mr. Berube explained that the meeting in September could be quite lengthy. The Lynnway Auto Auction, Breckenridge Estates and the OM Temple should be coming before the Board at that meeting. Mr. Berube informed the Board that he granted an Administrative Determination of Applicability to 17 Progress Road. About ten (10) years ago the Health Department granted them a variance allowing them to use the septic system for their warehouse addition. PRI Automation was the tenant at that time. They were going to increase the number of employees and office space and add an employee cafeteria. That never happened. PRI was bought out and vacated the premises. The new company never made the changes to the building. It is just a warehouse with a limited amount of office space. Now the septic system is failing. I met with the owners to discuss a new septic system. The Health Department has the plans that were approved ten (10) years ago based on the proposed usage. The owners want to design the septic system for its current use. I gave them a determination based on the current use.

Mr. Reader asked if the company is American Fulfillment.

Mr. Berube explained the company bundles promotional materials for places like Wendy's and Burger King and different chains. It is a simple operation. There are not that many employees.

Mrs. O'Rourke asked if they had a cafeteria.

Mr. Berube replied no. They never increased the office space. Health Agent, Phavy Pheng is present to give her report.

Health Agent, Phavy Pheng explained that in July there were twelve (12) new cases of illegal dumping and nuisance complaints. There were eighteen (18) noise and odor complaints from Empire Recycling. There were four (4) new noise complaints from 9 Progress Road. As for the outstanding court case at 27 School House Lane, the warrant to arrest is still pending. I met with the owner's

attorney and he informed me that Janet Moore was just discharged from the hospital so the case is still pending.

Mrs. O'Rourke asked what is the violation.

Ms. Pheng explained the violations are minor. The smoke alarm is not working but the carbon monoxide detector is working and the toilet on the second floor is not working.

Mrs. O'Rourke asked why is the Health Department involved.

Ms. Pheng replied because I filed the case in court. When the Fire Prevention verifies that the smoke detector and carbon monoxide alarms are working then I will close the case.

Mr. Berube explained that the Board of Health has overlapping jurisdiction.

Mrs. O'Rourke asked is that the only violation.

Ms. Pheng replied yes, it is very minor but we cannot lift the order until she corrects all the violations. Ms. Pheng stated the next case is the failing septic system at 78 Pinedale Avenue. On July 19, 2010 I went to court and Mr. Mitchell's attorney was absent. Mr. Mitchell requested that the case be continued for two (2) weeks until his attorney could be present. Judge Kerman agreed with the request.

Mrs. O'Rourke asked is Mr. Mitchell still pumping out the system every month.

Ms. Pheng replied yes however, I have not received the pumping record for this month. I contacted Mr. Mitchell and he said he would send a copy of the record to me.

Mrs. O'Rourke asked isn't there a subdivision being built in that area and isn't there a possibility that the residents maybe able to connect to town sewer.

Mr. Berube explained that Breckenridge Estates is going to be coming before the Board next month and as part of their proposal they will be installing a sewer easement that will allow some of the residents on Pinedale Avenue to connect to town sewer. That would help resolve Mr. Mitchell's problem.

Mr. Reader asked how close is 78 Pinedale Avenue to that area.

Mr. Berube replied that 78 Pinedale Ave is the first house.

Mrs. O'Rourke asked does Mr. Mitchell own the house.

Ms. Pheng explained that he now owns three quarters of the house. The one-quarter that is left, the sibling died in 2010 and the attorney is going to probate court. It will be a long process.

Ms. Phavy explained that regarding 16 Hancock Street housing case, I spoke with Attorney Kilian and he informed me that he was appointed as the administrator of the property by the Probate Court. According to Attorney Kilian a couple of people are interested in purchasing the property.

Mrs. O'Rourke asked why is the Board of Health involved with 16 Hancock Street.

Mr. Berube explained that the Fire Department called us to investigate this complaint with them. There was a release of hazardous materials. We observed that the house looks like a junk yard.

Mrs. O'Rourke asked who owns the house.

Mr. Berube replied the owner died.

Ms. Pheng explained the hoarding case at 483 Middlesex Turnpike is still ongoing. The owner is in the process of addressing the violations. On July 30<sup>th</sup> I conducted a re-inspection of the dwelling and some of the debris has been removed but he still has a long way to go. He is not living there. Mr. Lutz informed me that he is living with his friend.

Mr. Kenyon asked what is in the house.

Mr. Berube stated you could not walk through the house because there is so much stuff all over the place.

Ms. Pheng stated I filed two cases in the Northeast Housing Court. The first one is the failing septic system at 8 Alrose Drive. The owner did not respond to the order for correction so I filed the case in court. The second case I filed was a housing complaint at 128 High Street. The problem at 128 High Street is the smoke alarm was not working and there is also an electrical problem. Most of the violations have been corrected. A Show Cause hearing is scheduled for August 11, 2010 but if the violations have been corrected the hearing will be dismissed.

Ms. Pheng explained that a complaint investigation was conducted at 32 Sheridan Street.

Mrs. O'Rourke asked what is the barrel on the roof of the house for.

Ms. Pheng explained that barrel is a rain barrel. It is not hooked up yet. She bought a one (1) bedroom camper.

Mrs. O'Rourke asked how many people live in the camper.

Ms. Pheng replied six (6), four (4) children and two (2) adults.

Mr. Reader asked what is the purpose of the rain barrel.

Ms. Pheng replied they are going to use the barrel to collect rainwater.

Mrs. O'Rourke asked how long is the dumpster for the trash going to remain there.

Ms. Pheng explained she did not see the dumpster. There is a storage unit that is connected to the camper and is being used for the children to sleep in.

Mr. Reader asked what happened to the house.

Mr. Berube explained that the house got flooded during the March rains. They applied for FEMA assistance and received \$60,000 from their insurance company. I don't know why they did not have the insurance company provide them with a mobile home. I contacted Bill Laurendeau, the Emergency Management Director and according to him he did everything he could for them. I suggested that they call 211 for assistance from the Baptist Colony Church because they will come out and provide free services. The house was an old shack that was converted into a home. The contractors probably told them that the house was not worth fixing and it should be torn down and rebuilt.

Mr. Reader asked what is the purpose of the rain barrel on the roof.

Mr. Berube explained that he did not know. They have town water and all the utility connections have been inspected by the Building Department.

Mr. Kenyon asked how old are the children.

Ms. Pheng replied they range from age 14 years to newborn.

Mr. Berube explained that the Health Department will stay in contact with them to see if they have made any progress because if the situation does not change we may have to contact DSS. This is a situation that we do not want to see continue because the colder weather will be coming.

Mrs. Giroux asked how much longer will the Board allow them to take care of things on their own.

Mr. Berube stated that he would stay in contact with them to see what they plan on doing. They need to make some decisions. They need fix the place or move on. This situation is only temporary.

Mrs. Giroux asked Mr. Berube if he could place that on the agenda for the September 13, 2010 Board of Health Meeting.

Mr. Berube replied that he would put 32 Sheridan Street on the agenda in September.

**2010 Fall Town Meeting Warrant Articles**

Mrs. O'Rourke stated the next item on the agenda is the 2010 Fall Town Meeting Warrant Articles.

Mr. Berube stated if anyone is interested in submitting a warrant article for the 2010 Fall Town Meeting it is due by 4:00 p.m. on Monday August 16<sup>th</sup> 2010. Fall Town Meeting will begin on Tuesday, October 5<sup>th</sup> at 7:30 p.m.

**Mosquito Control Program Update**

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

Mr. Berube explained that included in the Board's package is a letter from Mosquito Control announcing the dates in August that they will be in Billerica to do localized spraying. As you have seen on television Triple E has been found in southeast Massachusetts. Mr. Berube informed the Board that the Town of Billerica is at a low risk for the West Nile Virus and at a remote risk for Triple E.

**Beaver Control Report**

Mrs. O'Rourke stated the next item on the agenda is the Beaver Control Report.

Mr. Berube explained that a copy of the Beaver Control Report is included in the Board's package. Mike Callahan, Beaver Solutions has replaced a number of water flow devices. Some of them were damaged by the March rains. It has been extremely dry and we have not seen too much activity. There has been some activity along the Middlesex Canal and Mike has gone in and done some trapping.

Mrs. Giroux asked about the budget for Beaver Control.

Mr. Berube explained that the budget is under the control of the Conservation Commission. The budget is well funded.

**McFarland Cascade Progress Report**

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

Mr. Berube explained that we did not receive a written report from McFarland Cascade because they have been on vacation. Mr. Fitzgerald contacted me this morning and gave me a verbal update. As mentioned at the last meeting GZA completed their Risk Assessment Report. They are now working on the Response Action Statement confirming that there is a condition of no significant risk. GZA will submit a copy of the Risk Assessment Report and the Response Action Statement to the Department of Environmental Protection (DEP) and the Board of Health. At this point they are not planning any site



remediation. They are going to leave the site as is and have the Activity Use Limitation placed on the property so it cannot be disturbed.

Mrs. Giroux asked if there have been any new complaints.

Mr. Berube replied no. Mr. Berube explained that he spoke with DEP about this situation and they were not surprised by the report however they can not draw any conclusions until GZA submits the Risk Assessment Report to them for review. GZA is in the process of preparing the reports

Mr. Kenyon asked if anything has been put in place for the other Boards to ensure that another company does not come into Billerica and set up a business that we do not know about.

Mr. Berube explained that the Activity Use Limitation would probably dictate what can and can not be done on that property.

**7:15 p.m. David B. Heron – 16 Pondover Road – Appeal Hearing for Notice of Violation and Order for Correction**

Mrs. O'Rourke stated the first hearing is David Heron, 16 Pondover Road, Appeal Hearing for Notice of Violation and Order for Correction.

Mr. Heron provided the Board Members with a copy of his presentation.

David Heron, 288 Charles Street, Reading, MA identified himself. Mr. Heron explained that this hearing pertains to my property at 16 Pondover Road. Mr. Heron explained that he purchased 14-16 Pondover Road, Billerica in 1986. In April 2010, I rented 16 Pondover Road to tenants by the name of Hogan. For the past twenty-four (24) years my tenants have complimented me on the condition of my apartments. Mr. Heron stated that he requested this hearing because he felt that his credibility as a landlord has been slandered and he would like to clear it up. The issue is that I have been cited for four (4) violations. Mr. Heron explained that he rents to responsible tenants that he would want for neighbors. Mr. Heron explained the maintenance and upgrades that he has done to both apartments from 2000 to present. In 2009 when I had a tree taken down I repaired the stairs. These are the stairs that I have been cited for. The Hogan's first inspected the apartment March 24, 2010 and again on several occasions in April 2010. Since they appeared to be good prospective tenants, I agreed to hold the apartment for them until May 2010. On April 28, I turned the apartment over to them so that they could start moving in. A few days later Mr. Hogan informed me that he saw a few black ants and a dead mouse under the stove. Mr. Hogan took the stove apart and power washed it. I bought and applied ant insecticide inside and outside the foundation and set up mousetraps. Shortly thereafter Mr. Hogan claimed his wife and son was experiencing insect bites on their legs so she decided to stay at her mother's until the issues were cleared up. I met with Mr. Hogan and he insisted that I replace the stove and get an exterminator and fill in the cracks in the hardwood floors, which I did. However, I thought it was a bit extreme to buy a new stove. The first exterminator explained that the black ants were a common spring occurrence. On May 19, 2010 the exterminator re-sprayed the foundation and interior

for ants, spiders, etc. After he completed the extermination, I bought glue pads and worked with Mr. Hogan to place the glue pads in several locations. The exterminator explained that the insect bites may very likely be the result of fleas from the Hogan's two (2) cats or bugs in their mattress which were disturbed during the move. Mr. Hogan was dissatisfied with the exterminator's findings that there were fleas in the apartment and insisted that the exterminator return. The exterminator's sales lady told Mr. Hogan that they would need to drill holes in the walls and apply insecticide in the wall framing. So I authorized the exterminator to return and re-spray two more times to insure there would be no more insects. After each spraying the Hogan's were told that they could move in after two hours, however they chose not to. After the first spraying, I was informed that the baby slept with the parents and the cats lay around on their bed all day. I checked the sticky pads for a couple of days and found nothing. I conveyed that to the Hogan's. I put Mr. Hogan's name on the account so that he could talk to the pest control exterminator. On May 25<sup>th</sup> 2010 a second treatment was done and I authorized the exterminator to work with Mr. Hogan to fumigate the apartment for fleas. The exterminator checked the entire apartment and found an old mouse nest in the garage ceiling, which he left on the garage floor along with the mice droppings. A follow-up extermination was done on June 3, 2010 for the fleas and the exterminator informed me that he was of the opinion that the cats brought the fleas into the house. I agreed that the Hogan's could bring their cats with them. The previous tenant confirmed to me that she had never experienced any insects nor did her dog ever have fleas. The exterminator only found dead fleas around the cat's litter box, which suggests that the cats were the problem and not the apartment. Mr. Heron stated that the Hogan's did not complain about the closet ceiling stain, the broken deck stair or the missing electrical box covers in my garage workshop. In late May Mr. Heron offered to release the Hogan's from their lease allowing them to rent elsewhere. Mr. Hogan agreed that he wanted to move elsewhere. Mr. Hogan then began to make vague demands that he had been damaged and expected thousands of dollars for compensation. Mr. Hogan repeatedly stated that if I would not fully compensate him for his losses, he would report me to the Board of Health, Attorney General and Building Inspector. Mr. Hogan stopped paying rent but was using my apartment for storage. When I did not make a cash offer Mr. Hogan decided to retaliate by contacting the Board of Health and Building Inspector. Mr. Heron explained in detail Mr. Hogan's complaints and how he corrected these issues. Mr. Heron explained that he believed that the Hogan's changed their mind about the apartment shortly after moving in. Although I acted swiftly on all their complaints, when I would not accede to their blackmail, they chose to retaliate by contacting the Board of Health. When the Hogan's finally moved out a week ago, they took four (4) cabinet shelves with them. I notified my attorney that I was deducting their replacement cost from their security deposit and his attorney replied that he took the shelves home to clean them and would return them. Mr. Heron explained that Mr. Hogan's complaints came long after I addressed their insect complaint and were manufactured to seek advantage in a law suit attempting to extort tens of thousands of dollars for imaginary damages. Mr. Heron stated that he is hoping to clear his reputation as a landlord because he has always had a wonderful relationship with all his tenants.

Mrs. O'Rourke thanked Mr. Heron. Mrs. O'Rourke asked Ms. Pheng if she has inspected the apartment

Ms. Pheng explained that she received a complaint from Mr. Hogan in May however he stated that he liked the landlord so I suggested that he should work with the landlord and if he was not satisfied with the results then he could file a complaint. In June he came to the Board of Health office and filed a complaint. I conducted an inspection June 17, 2010 and found four (4) violations. The rear deck stairway was not stable, mice droppings were found throughout the attached garage and the basement, the electrical boxes located in the attached garage were not properly covered and the water stain in the closet ceiling located in one of the bedrooms appeared to be an old stain. I advised Mr. Heron to re-paint the closet ceiling because the stain was old. Mr. Hogan was adamant and insisted that there is a problem with the roof. Mr. Heron painted the stain and it appeared to be all set. Mr. Heron made an effort and fixed all the violations. I contacted the pest control and they told me that all the rodent treatments had been completed. On July 28, 2010 I conducted a re-inspection and found that all the violations had been addressed.

Mr. Reader asked Ms. Pheng if the tenants were still living in the apartment.

Ms. Pheng replied no. The tenants only lived there for two (2) weeks. When they found the ants they requested that the landlord have pest control treat the ant problem. Ms. Pheng explained that she contacted the pest control company and they told me that they did not find any bedbugs they only found fleas so they treated the apartment for fleas along with the treatment for rodents.

Mrs. O'Rourke stated so all the work has been completed while the tenants were not living there.

Ms. Pheng replied yes. I sent a letter of compliance to Mr. Heron on August 3, 2010 informing him that a re-inspection was done at 16 Pondover Road on July 28, 2010 and it was determined that the violations had been satisfactorily addressed.

Mrs. O'Rourke stated so we are now talking about the rear deck stairs that were not stable, the electrical boxes that were not covered properly, the water stain in the bedroom closet and the mice droppings found in the garage and basement. As of July 28, 2010 have the four (4) violations been taken care of.

Ms. Pheng replied yes all the violations have been addressed.

Mrs. O'Rourke asked if the Hogan's were present. The Hogan's were not present.

Mr. Berube explained to the Board that when the Health Department receives complaints between landlords and tenants, we remain impartial in these cases. We just want to make sure that there is compliance with the State Sanitary Code. We are not judging people or choosing sides. There is a great deal more going on between the tenant and the landlord, which is not an issue for the Board of Health. The complaint has been resolved and he has complied with the order. Mr. Heron chose to exercise his right for a hearing. He feels that this individual has harmed his reputation as a landlord. Mr. Heron wants to go on record that he is a good landlord and that he is responsible and maintains his property.

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

The Board did not have any questions.

Mr. Berube stated that the Board recognizes the efforts Mr. Heron has made to maintain the dwelling in compliance with the State Sanitary Code, Chapter II and based upon the facts, no action is required by the Board of Health.

**7:30 p.m. Amy West – 17 Waterview Avenue – Request a Variance Relative to Groundwater Separation to Basement Floor of New Single Family Dwelling**

Mrs. O'Rourke stated the next item on the agenda is Amy West, 17 Waterview Avenue, requesting a variance relative to groundwater separation of the basement floor of a new single-family dwelling.

Ms. West passed out handouts of the old elevation certificate, the new certified plot plan and the new elevation certificate. Amy West, 17 Waterview Avenue, Billerica identified herself.

Mr. Berube explained that in February, 2010 the Board granted Amy West a variance to reconstruct a house in the flood plain. They recently started construction and ran into a few problems. As a result of the problems they had to come back before the Board.

Ms. West explained that the problem we ran into was that we hired a structural engineer as well as an engineering company to help us through the process with the Board of Health and the Conservation Commission to reconstruct our home on the existing foundation. When the house was demolished there were huge cracks that crumbled therefore the existing foundation was not useable. We went to a Town Official in the Building Department and he gave us permission to go ahead and replace the foundation. He told us to get an engineer to certify that the new foundation was in the same location as the existing foundation, which we did. We apologize that we did not come to you first but we thought that when we went to the Building Department everything was okay that is why we proceeded. We met with Mr. Berube and Mike Kinney, the Building Inspector to discuss how we can fix this problem. We have spent \$10,000 on the new foundation and before that we spent \$13,000 on the engineering designs for this process. We will need to spend another \$5,000 to fix the basement which will put us into a financial hardship. We would like to know if there is something else we could do so that we do not have to fill in the basement. We will install flood vents.

Mrs. O'Rourke asked what is on the property now.

Ms. West replied there a two story colonial house with a farmer's porch just like what was there prior to the construction.

Mrs. O'Rourke stated so the house is still there.

Ms. West replied the house was demolished and rebuilt on the new foundation.

Mrs. O'Rourke stated so the new house is already built.

Ms. West replied yes.

Neil Senna, Amy's "father-in-law" to be, identified himself. Mr. Senna explained the new house is in the same location as the old house. I asked the Building Department what we could do. The Building Inspector told me it would not be an issue as long as the new foundation is in the same location as the previous foundation. The elevation of the basement floor is the same and the four (4) corners of the building are the same. About four (4) weeks later Mr. Berube came to the site and asked who gave us permission to put in a new foundation and why did you do that. I told him that we received permission from the Building Department and I did not think there would be an issue. Now they want us to fill in the basement.

Mr. Berube explained that the Health Department received an anonymous written complaint regarding this property. I conducted an inspection of the property with the Conservation Commission Agent and a new foundation was built. I asked Mr. Senna if he knew that if they wanted to put in a new foundation, they needed to come back before the Board of Health because that would be a change in the original plans that were approved by the Board of Health. Mike Kinney and I met to discuss this situation and to try to figure out what could be done to bring this house into compliance now that the foundation is in and the house is up. I advised them to file for a variance. The foundation is not two (2) feet above the water table and the basement floor is not level with the flood elevation. Now floodwaters can come in and pool in their basement and there is no way for the water to drain out.

Mrs. O'Rourke asked could they install louvers.

Mr. Berube explained that will drain the water down to the level of the louvers however the area below the flood elevation has no way of draining out.

Mr. Senna replied there is a sump pump hole in the basement. The basement floor is within an inch of what it was before. The foundation is exactly the same as before.

Mrs. O'Rourke asked why did they use the old foundation.

Mr. Berube replied they chose to use the old foundation to save some money.

Mr. Senna explained that the structural engineer told Ms. West that the foundation was safe to use. I was present when the house was being demolished and two (2) of the walls of the foundation caved in. They have spent \$20,000 on this foundation and the engineering problems and the town wants them to fill the basement in.

Mr. Reader asked if they had used the existing foundation would the cellar floor be the same as what it is now.

Mr. Berube replied yes, they just recreated what the old foundation was.

Mr. Kane explained they had an opportunity to build the house in compliance with the regulations to build a safer and habitable house. They spent a lot of money to recreate a bad situation.

Ms. West stated that when we originally started this project we wanted to construct a new foundation. Our engineer and the Conservation Commission told us to use the existing foundation. The existing foundation was built in the 1920's and there was a door where the sump pump flex hose came out at ground level.

Mr. Senna explained that originally the Conservation Commission did not want us to fill in the basement because we would be dispersing water that has been going in the basement for years. When we spoke to the Building Inspector he told us that it would be okay to replace the foundation as long as it was in the same location as before.

Alvin Villa, 5 Waterview Avenue, identified himself. Mr. Villa stated that he understands the issue with the request of the variance and what they have done to try and fix it. What is the town asking them to do?

Mr. Berube explained that in order to comply with the building code and the FEMA regulations the lowest floor of the house, which is the basement floor cannot be any lower than the flood elevation. Right now it is a foot and a half too low. Plus they would have to install flood vents. They violated the variance that was issued in February, 2010. The Board of Health has a regulation that the basement floor needs to be two (2) feet above the water table that is another violation. The applicants are trying to resolve these issues.

Mr. Villa stated so the recommendation of the town is to fill in the basement.

Mr. Berube replied they would have to raise the basement floor a foot and a half.

Mr. Villa asked what about the regulations against the displacing of water.

Mr. Berube explained the foundation has the same footprint as the old foundation so it is not displacing more water than the original house.

Mr. Villa stated you said that they will be raising the floor two (2) feet.

Mr. Kane stated the water has already been displaced by the original footprint. The concern of the Board is that there will be a conservation water flow flood compensation issue and there will also be a public safety habitable home issue. Having the floor of the basement below the water level allows

floodwater into the home, which creates a health risk for the home and the residents. The Board's biggest concern is the water coming into the home and the public health concern related to that. If the sump pump is functioning properly water should not be in the basement.

Mr. Villa stated that he does not want to get more water.

Mrs. O'Rourke commented if you get water now, you will still get water. You will not get more.

Mr. Kane explained if they had come back before the Board they would have built the house to the current regulations and this would not have been a problem. By recreating this situation they created the same bad conditions for themselves as homeowners with water in their basement and for all the neighbors by decreasing floodwater compensation.

Mr. Villa stated that he is trying to understand what the town is going to do to make the situation better.

Mr. Kane replied the town is trying to figure out a way that would keep the water out of their house and keep the house habitable.

Ms. West explained that we have a sump pump and a perimeter drain setup in the basement floor.

Mr. Kenyon commented when we had the March rains and the river flooded the water was up about twenty (20) feet in front of the house.

Neil Senna, Jr. "husband to be", identified himself. Mr. Senna, Jr. stated that when we purchased the house I asked the Conservation Board if we could fill in the basement to make the house a slab so that we would not have these water problems. The Conservation Board told me no because you would be filling in all that cubic volume which is going to disperse the water.

Mr. Berube stated that he does not understand that statement because the Conservation Commission does not have jurisdiction over the Board of Health Regulations.

Mr. Senna, Jr. stated if that is the case we just spent \$13,000 for an engineer to tell the Conservation Board why we are filling in two (2) cubic volume of space and the engineer had to show where the water was being dispersed.

Mr. Senna Sr. replied if we could have filled in the basement we would have used the old foundation or fixed the old foundation because it would only have been sticking out a little. It would not have been a full basement. We thought that constructing a new house on an old foundation was not the thing to do. That is why we went to the Building Department and talked to the inspector.

Ms. West stated that they would install the flood vents.

Mrs. O'Rourke asked if they were living in the house now.

Ms. West replied no. The house is not fully constructed.

Mr. Berube replied they are recreating the same exact house that was there before. Regulations and codes have changed. I am not comfortable with what is being proposed. I am recommending that the Board continue this hearing until I have a discussion with the Building Inspector and FEMA.

Ms. West stated that they did get flood insurance on the property.

Mr. Senna, Sr. stated that we read the complaint letter that was received and there was no name or address on the letter. In the letter it states why are these people getting away with this. We are not trying to get away with anything. Why didn't they sign their name and why didn't they spell the street name correctly?

Mr. Berube explained that the Board of Health receives a number of anonymous complaints. We check them out to ascertain what the facts are.

Mr. Senna, Jr. explained that we have been paying for this property since we bought it last September and we are also paying rent. Is there anything the Board can recommend so that we can move into the house when it is ready?

Mr. Berube suggested that if the Board wants he would speak to the Building Inspector and ask if the Building Department could issue a temporary occupancy permit.

The Board agreed to temporary occupancy of the new dwelling until this matter is settled.

Mrs. O'Rourke asked if anyone in the audience would like to speak.

Mr. Villa stated that he has a concern with the water situation for himself and his neighbors.

Mr. Berube explained that the foundation is not going to change the displacement of water. The foundation itself displaces water and with the addition of the flood vents, the water could flow in and flow out. With today's standards and regulations this house would not have been built. However that house has been there for decades and is grandfathered. We can not deny them the right to rebuild on the same footprint. The question is do they meet FEMA regulations, the Building Code and the Board of Health regulations.

Mrs. Giroux made a motion to continue the hearing until the Director of Public Health, Richard Berube, obtains the necessary information for the Board to render a decision. Furthermore, the Board voted to allow temporary occupancy of the new dwelling until this matter is settled.

Mr. Kenyon seconded. So voted unanimously.



**7:40 p.m. National Grid – Federal Street Electric Easement – Request a Variance for work within the Flood Plain**

Mrs. O'Rourke stated the next item on the agenda is National Grid, requesting a variance for work within the Flood Plain.

Marc Bergeron showed the plans of the proposed work.

Marc Bergeron, Senior Wetland Scientist for Vanasse Hangen Brustlin, Inc. Consulting Firm, identified himself. Mr. Bergeron explained that he is present on behalf of National Grid. Mr. Bergeron explained that National Grid is requesting a variance to replace an existing corrugated metal pipe, at an existing electric transmission line located between Middlesex Turnpike and Route 3 behind Federal Street. Mr. Bergeron pointed to the location of the work on the plans. In the fall of 2008 National Grid had to repair a line fault and could not gain access to the area because beavers had blocked the existing culvert. The culvert was flooding onto the right of way. During that time we filed for a trapping and a breaching permit. The Board of Health issued the necessary permits and directed us that if the dam needed to be breached below the water levels we would have to work with the Conservation Commission. Prior to coordinating with the Conservation Commission, an unknown party removed the entire dam and caused the water level to drop. We worked with the Conservation Commission to put some additional sand bags in the area to raise the water level back up. The concern is that if the water level drops during the wintertime it would cause damage to the wetland environment and wildlife in that area. At that point National Grid did complete their repair while the water level was down. We then tried to figure out a solution to restore the water level and replace the culvert because it was still damaged from the beavers. We filed a Notice of Intent to replace the culvert where there was additional damage. We have been in the process of working with the Conservation Commission on what the appropriate water level should be and what the appropriate solution is. The culvert will be the same size and at the same elevation. There is still high beaver activity in that area. Beaver Solutions has been contracted by National Grid to do the work. The replacement culvert will be a smooth wall reinforced concrete culvert at the same elevation, which will discourage beavers from damming and blocking the culvert. We will also install a beaver deceiver flow device so that if the beavers come back we won't have this problem again. Mr. Bergeron stated that he will answer any questions that the Board Members may have at this time.

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

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

Mr. Berube explained that Phil Paradis from BETA Group, Inc. is the consultant on behalf of the Conservation Commission and the Board of Health for this project. Mr. Paradis will give the Board a brief report.

Phil Paradis, Professional Engineer from BETA Group, Inc. identified himself. Mr. Paradis explained that he has been working with Marc Bergeron on this project for over a year. The Department

of Environmental Protection (DEP) offers guidance for Conservation Commissions on how to reduce the flooding issues caused by muskrat and beaver related activities. As Marc mentioned you trap the beavers and breach the dam as little as possible to reduce the flooding as necessary. The idea is to replace the culvert and install beaver deceivers and sand bags to raise the water level back up to the elevation that it was before. Beaver Solutions indicated that with the beaver deceivers the water levels will be maintained over time whereas the sand bags will deteriorate.

Mrs. O'Rourke asked what is the water level control device.

Mr. Paradis replied it is a pipe system.

Mr. Bergeron stated an attachment of the pipe system was submitted with the permit application.

Mr. Paradis explained the water level control device prevents the beavers from blocking the pipe. There will be another water device at the other end. The elevation of the culvert will control the device.

Mr. Bergeron explained that this device allows flexibility in terms of managing water levels. One of National Grid's concerns is that they did not want to create a problem for properties off the right of way. This area is not located in the FEMA flood plain. We have collected a lot of data over time regarding the water levels; that is why this process has taken so long.

Joyce Graham, 422 Middlesex Turnpike, Billerica identified herself. Ms. Graham stated that her concern is her property going to flood after the work is done.

Mr. Bergeron replied no because we are going to replace the damaged culvert and then install the flow device to manage the water level. The flow device will raise and lower the water level so the areas won't flood. If the water builds up behind the culvert then a portion of the flow control device will be removed to allow the water to flow towards the Concord River.

Ms. Graham stated that she is concerned with the water flow in another culvert that goes under the old railroad bed that is also being blocked by brush and debris.

Mr. Paradis asked where is the other culvert located.

Ms. Graham explained the location of the other culvert at 422 Middlesex Turnpike next to the substation. Is what you are proposing going to change the water flow to that stream and backup into that culvert?

Mr. Bergeron explained that the water has been flowing freely for the past year and a half in this area, prior to that the beavers had dammed it up. As part of the Order of Conditions from the Conservation Commission we are going to clean out that culvert as well. Mr. Bergeron pointed to the photo and explained the substation and Route 3 area. We are going to lower the flow through that area and clean out the culvert.

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

No one had any questions.

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

The Board Members did not have any questions.

Mr. Berube explained that this project has been ongoing since 2008. It has been a very difficult process. A great deal of investigation of the area has been done. They will be maintaining the wetlands, and the flow of water through the culvert. They are also going to make sure that they are not going to flood the neighbors. The surrounding drainage system will not be compromised. National Grid will monitor the culverts so that there won't be any problems in the future. Mr. Berube stated that he recommended the proposal.

Mr. Reader made a motion to grant the variance for National Grid to work within the flood plain for the proposed culvert replacement on the electric transmission line between Federal Street and Middlesex Turnpike based upon the following findings of fact and pursuant to the standard conditions.

#### **FINDINGS OF FACT**

1. The work described in the applicant's request is within an area subject to protection under the Billerica Board of Health's Rules and Regulations, Chapter 5, Section 5.5.005 (1).
2. The Board of Health conducted a public hearing on August 9, 2010 and properly notified abutters in accordance with Billerica Health Regulations, Chapter 1, Section 1.2.007.
3. The proposed project was reviewed by Philip F. Paradis, Jr., P. E of BETA Group Inc., the Board of Health's Consulting Engineer, for potential impacts to the Flood Plain and other environmental impacts.
4. The applicant proposes to replace an existing damaged culvert and install a beaver control device along an existing access road within an electric transmission easement between Federal Street and Middlesex Turnpike.
5. The intent of the work is to restore and maintain the hydrology of the flood zone and the upgradient wetland system without affecting access to the electric transmission lines or causing future flooding to the adjacent properties.
6. 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.

**STANDARD CONDITIONS**

Standard conditions number 1, 2, 3, 4, 5, 6, 9, 10, 11, 12, 13, 14, 15, 19, 25, 27 and 29 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 Vanasse Hangen Brustlin, Inc. dated July 2, 2009 and revised to June 6, 2010 and stamped by Craig C. Lizotte, R.P.E. #39817.
- B. The proposed work shall be completed between July 1 and October 1.
- C. Applicant shall remove and dispose of debris (roofing shingles) on east side of culvert in the easement. Documentation shall be submitted to the Board of Health as proof of proper disposal.
- D. Mechanical equipment access to and around the construction site shall be limited to the gravel road within the easement.
- E. The Applicant's Engineer, Beaver Solutions, Director of Environmental Affairs, and the Director of Public Health will determine, in the field, the appropriate location and elevation of the Flow Device and sand bags to meet the performance standards of the Conservation Commission and Board of Health while preventing excessive flooding of the easement. Any modifications to the location and elevations, as may be necessary based on site specific issues, shall be approved by the Director of Environmental Affairs, and the Director of Public Health.
- F. The Flow Device and sand bags shall be inspected quarterly and after significant storm events (in excess of 1 inch in 24 hours). Displaced sand bags shall be replaced and stabilized. Any blockages and damage to the Flow Device shall be noted and corrected. Copies of the inspection and maintenance reports shall be sent to the Conservation Commission and the Board of Health for their records.

Mr. Kane seconded. So voted unanimously.

**7:50 p.m. Gina Fernandez – Piece “ah” Cake – 737 Boston Road - Request a Variance Relative to Grease Trap Requirements for a Food Service Establishment**

Mrs. O'Rourke stated the next item on the agenda is Gina Fernandez, requesting a variance relative to the grease trap requirements for a food service establishment, Piece “ah” Cake at 737 Boston Road.

Gina Fernandez, 4 Harnden Road, Billerica, identified herself. Ms. Fernandez stated that she would like to open an Ice Cream Shop at 737 Boston Road, Pinehurst where the Subway shop was located. Ms. Fernandez explained that she was proposing to have an ice cream shop with a large selection of ice cream desserts, more than ice cream cones. I am requesting a variance for an exterior grease trap. An interior grease trap will be installed and cleaned monthly as a precaution. Records will

be kept for the Board of Health to provide proof of upkeep. No baking will be done on this site. The exterior grease trap is an extra expensive that I cannot afford. I will be using all disposable products.

Mrs. O'Rourke asked is there an exterior grease trap in that location.

Ms. Fernandez replied that the owners of Subway took everything with them, when they left.

Mr. Berube explained that Subway did not have an exterior grease trap.

Mr. Reader asked did Subway have an interior grease trap.

Mr. Berube replied that Ms. Fernandez has to install an interior grease trap. Included in the Board's package is a memo from Health Agent, Angela Braun stating that she does not have a problem waiving the requirements for an exterior grease trap because Ms. Fernandez is not going to generate any grease. She will not be doing any cooking on the site. The baked goods will already be prepared.

Mrs. O'Rourke asked Ms. Fernandez if she was going to cook anything on the premises.

Ms. Fernandez replied not in the beginning, maybe in a few years.

Mrs. O'Rourke asked so you could possibly be cooking in a few years.

Ms. Fernandez explained that if the business took off and things were going well she might decide to do some baking, however I will not be cooking with grease.

Mr. Berube stated that the Board could make a condition that if there are any changes in the operation Ms. Fernandez would have to notify the Board. Then the Board can review the changes and make a determination if an exterior grease trap would be necessary.

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

The Board Members did not have any questions.

Mrs. Giroux made a motion to grant a variance of the Board of Health Rules and Regulations, Chapter 2, Section 2.2.001, which requires the installation of an exterior grease trap for all food establishments based upon the following findings of fact and subject to the following conditions:

**FINDINGS OF FACT**

- 1) The work described in the applicant's request is within an area subject to protection under the Board of Health's Rules and Regulations, Chapter 2, Section 2.2.001.

- 2) The applicant proposes to operate an ice cream shop at 737 Boston Road. The food service establishment will have a seating capacity of thirty (30).
- 3) The operation will not generate any significant grease (e.g. there will be no baking on site; food will be served on single use items, etc.).
- 4) An interior plumber's grease trap will be installed and maintained on a monthly basis. Records will be kept of all maintenance activities.
- 5) The Board of Health has determined that the actions proposed by the applicant are adequate measures to protect the public health and environment, and complies with the intent of Board of Health Rules and Regulations. Further, approval of the applicant's request will not be detrimental to the public health and environment.

### **CONDITIONS**

Standard conditions number 2, 6, 10, 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 to the Board of Health.
- B) A properly sized interior grease trap shall be installed in accordance with the Massachusetts State Plumbing Code, 248CMR2.00. The plumber's grease trap shall be located to be easily accessible for cleaning.
- C) The grease trap shall be inspected monthly and shall be cleaned by a licensed service company (i.e. a septage hauler licensed by the Board of Health) whenever necessary or at least once a month, whichever is sooner. The owner/permittee shall keep all inspection, pumping and maintenance records. These records shall be made available upon request for inspection by the Board of Health or their designee.
- D) Any change or expansion of the food service operation (e.g. menu change, etc.) requires prior approval of the Board of Health.
- E) This variance can not be transferred from one owner to another owner, from one food establishment to another or from one type of food operation to another.

Mr. Kenyon seconded. So voted unanimously.

**8:00 p.m. OfficeMax – 9 Progress Road – Request for Enforcement to Abate Noise Nuisance**

Mrs. O'Rourke stated the last item on the agenda is OfficeMax, 9 Progress Road, requesting enforcement to abate noise nuisance.

Attorney Jeffrey Roelofs gave the Board Members a package of materials including a memo requesting Enforcement to Abate Noise Nuisance, a set of exhibits, OfficeMax Property information, an aerial photograph of OfficeMax and three statements from the neighbors who also experience the noise.

Jeffrey L. Roelofs, identified himself and explained that he prepared the package for Thomas Berka. Attorney Roelofs explained that he was representing Thomas Berka, 51 Wildcrest Avenue, Billerica. Attorney Roelofs introduced Thomas Berka and Eric Wood, acoustical engineer from Acentech. On July 16, 2010 we submitted a request for enforcement action. Mr. Wood has prepared a Noise Report. I also have three (3) statements from neighbors and a copy of the aerial photograph of the local residents that live in close proximity to Mr. Berka who have confirmed similar noise concerns from OfficeMax. The statements are from the residents at 47 Wildcrest Avenue, 49 Wildcrest Avenue and 61 Wildcrest Avenue.

Mrs. O'Rourke asked if the residents are in the audience tonight.

Attorney Roelofs replied yes. Attorney Roelofs explained that the neighbors are confirming the facts that are articulated by Mr. Berka. Attorney Roelofs stated that he would highlight some of the areas of the package that has been submitted to the Board. First is my letter of introduction dated July 16, 2010 then he identified what is included in the exhibit package. This package includes the various State and local regulations and standards that have been violated since January 2010. It includes the Billerica Noise By-Law, Billerica Board of Health Regulations, State Statues to abate nuisance conditions Chapter 111, Sections 122-125, and MassDEP's Noise Policy and Related Guidance. Exhibit 5 includes OfficeMax Property Information and the neighborhood that surrounds OfficeMax. Exhibit 6 includes Mr. Berka's affidavit. In his affidavit Mr. Berka explained the historical activity of Boise Cascade. Boise Cascade's trucking activity was low. In January 2010 the trucking related activities at the OfficeMax property increased significantly. It's the expanded uses that are causing the problems. Attorney Roelofs explained that he has requested public records from the Building Department, Planning Board, Town Clerk and Zoning Board of Appeal to have a better understanding as to whether or not this facility has received site plan approvals and special approvals that would be required now that might not have been required back in the 1980's. In Mr. Berka affidavit it explains the excessive noise that he is experiencing during the hours of 10 p.m. to 7 a.m. Exhibit 7 is a copy of the Acentech Noise Report submitted by Eric Wood on March 30, 2010. The report documents the noise emanating from the OfficeMax property. Exhibit 8 is the letter from OfficeMax to Richard Berube on June 25, 2010. Exhibit 9 is an excerpt from the Billerica Zoning provisions. Exhibit 10 explains relevant Judicial Decisions. Attorney Roelofs gave an example of two other cases that has similar facts and confirmed that the Board of Health does have the authority to investigate and deal with these matters. This is a nuisance that is not allowed by State Law or under the local laws. Attorney Roelofs then explained the Factual Background and the significant change since Boise Cascade was there. Historically there were

some problems with Boise Cascade however they were responsive and were remittent to work things out. January 2010 everything changed. The Legal Framework is the next section, which explains the statutory authority that the Board of Health has under Massachusetts General Law, Chapter 111. Then he explained the section under MassDEP Noise Regulations and Standards. These standards allow for a certain level of increase by more that 10 dBA over the background. It is very clear that OfficeMax is violating the MassDEP's standard. The Billerica Noise Bylaw in some respects is stricter than the State's standards. We have not seen any correspondence from OfficeMax in seven (7) months regarding this problem. Under the Board of Health's Regulation's it states "*that no person shall create excessive noise; any act in violation of this regulation shall constitute a nuisance relative to MGL Chapter 111, Section 122.*" I attached the three (3) cases that were discussed earlier in the letter. In Section 4, I suggested a short list of measures that maybe helpful as part of a long-term solution. Attorney Roelofs explained that there maybe a need to implement an operational component with hours of limitation. OfficeMax may need to install some type of sound barriers. OfficeMax is in the best position to present to the Board and Mr. Berka what makes sense for a long-term solution. We have included some items that we think should be considered and explored by OfficeMax and the Board. It has been seven (7) months since these complaints have been logged and nothing effective has been done. We are asking the Board to put some limits on the hours of operation as a short-term measure until a long-term plan has been proposed, reviewed and approved by the Board. We know that OfficeMax is not going to be receptive to limiting the hours of operation but they are violating the law and they should be asked to comply with the law. The noise occurs in the nighttime hours when you would expect to have a quiet neighborhood. Something needs to be done in the short-term to alleviate the problem while the individuals are working through with a long-term plan. Attorney Roelofs stated Mr. Wood is present to explain the noise study that he has performed.

Eric Wood, employed by Acentech Inc. in Cambridge, MA identified himself. Mr. Wood explained that he has been an environmental and industrial acoustic consultant for more than thirty (30) years. In March 2010 Tom Berka contacted me and described to me the noise at and inside his home coming from the OfficeMax distribution center. He described the loud noises from the idling and moving trucks, the backup alarms, the discharge from the air brakes on the trucks, pounding and banging noise from the facility loading bay and vibrations. He told me that the nighttime noise has increased greatly this year. He also mentioned that bright truck headlights shine late at night into his house. I suggested that he contact OfficeMax and express his concerns to corporate management. It is my experience that upper level management wants to operate as a good corporate citizen and as a good neighbor. He told me that he had spoken to the facility manager and the noise was still loud, still intrusive and still occurred. I agreed to measure the noise on his property during the time when he observed the noises from the OfficeMax facility. I agreed to compare the measurement results with the noise limits published by MassDEP. I suggested ways that OfficeMax could reduce the noise. I also documented the results of my findings in a letter dated March 30, 2010. I installed and calibrated professional grade precision instrumentation on his property, close to his home and the backside of his home facing the OfficeMax property. The noise was measured continuously from March 10 to 12, 2010 and again from March 16 to 20, 2010. There is a gap between the two time frames because of rainy windy weather. During those times when I measured, Mr. Berka also kept written logs of the times when he observed loud noises from the OfficeMax facility. My measurements and his observations were



combined to document the OfficeMax noise levels. I did two (2) sets of measurements to determine if the noise complied with or if the noise exceeded MassDEP's Noise Policy and the Town of Billerica's Noise Bylaw. First I measured the hour by hour background noise level which was exceeded 90% of the time. Mr. Wood explained how he did the background measurements. Mr. Wood explained that the sound level without OfficeMax's intruding noise ranged from 34 to 40 dBA. I also measured minute-by-minute intermittent noise level and that was exceeded 1% to 10% of the time. Without OfficeMax's operation the nighttime background noise level is 40 dBA or lower. With OfficeMax's operation the noise level is 20 to 25 dBA greater. If the noise level is exceeded by more than 10 decibels the MassDEP considers it a violation of their policy in residential areas. The data in my report shows that the level 20 to 25 dBA louder exceeds the allowable limit. The Town of Billerica's Noise Bylaw provides a nighttime noise limit of 50 dBA in residential areas. From the measurements that I have recorded OfficeMax exceeds the Town of Billerica's Noise Bylaw and MassDEP's Noise Policy. The background sound level at Mr. Berka's home is 34 to 40 dBA without the OfficeMax operation, which is typical. An increase of 10 dBA doubles the noise level. In my opinion the noise is unnecessary. There are many ways available to OfficeMax to reduce the noise level. Mr. Wood stated that if anyone has any questions he would try to answer them.

Mr. Kane asked would any of the sound measurements be taken when OfficeMax was not operating.

Mr. Berka replied they operate Sunday through Thursday night. The most disturbing noise occurs during the nighttime activities.

Mr. Kane asked do we have any sound reports for Friday and Saturday night when OfficeMax is not in operation.

Mr. Wood replied no.

Mr. Kenyon stated that he visited the site on Saturday and the business was not operating, however there were seventeen (17) trucks in the parking lot.

Mrs. Giroux asked what other measures can OfficeMax take.

Mr. Wood replied OfficeMax can discontinue nighttime operations. They can close the gates at night and not let any trucks in. I realize that they need to load the trucks so that they can make deliveries in the morning however they can load the trucks in the morning and delay the deliveries a few hours. Another suggestion is to move the loading operation to the other side of the building. They can also move the entire operation to an area that is not a residential area. OfficeMax can build a high wall like they do on highways to reduce the noise. I think the Board should hire an independent qualified acoustic consultant to represent them and then present OfficeMax with the bill. They caused the problem they should pay for the consultant.

Mrs. Giroux asked how old are the houses in that neighborhood and how long has the distribution center been there.

Attorney Roelofs stated that Mr. Berks's field card shows that his house was constructed in 1983 and the distribution center was constructed in 1984.

Mrs. Giroux stated so Mr. Berka's house and OfficeMax have been there about the same amount of time.

Mr. Wood commented that an important element to remember is that a change has occurred.

Mrs. O'Rourke asked if Chris Michaud from OfficeMax was present.

Chris Michaud, Operations Manager at OfficeMax, 9 Progress Road, identified himself. Mr. Michaud stated that OfficeMax and Boise Cascade is the same company only the name was changed. There is no question that the noise has gotten louder. Mr. Berube has met with the Operations Director, Kevin Crowley, to discuss these issues. OfficeMax has been trying to resolve any noise issues that may be emanating from the facility. When Mr. Berka came and informed us that there were some issues we tried to find out what is causing the noise issues. We compact pallets and that does create a loud noise. We are no longer compacting pallets after 9:00 p.m. It is a shipping facility and we have prohibited overnight truckers from parking in the lot. We have called the Police Department on our own vendors to keep them out of the lot. Mr. Michaud pointed to the two trailers on the plan and explained that the trailers have been moved to the end of the shipping dock closest to Mr. Berka's house to act as a sound buffer to try to curtail some of the noise. We have seventeen (17) vehicles that have backup alarms. We have decreased our backup alarms to the lowest decibels allowed, which is 20 decibels. We have curtailed our fueling source from four (4) nights a week to three (3) nights a week and changed our vendor. This process must be completed by 9:00 p.m. OfficeMax had its own sound study conducted by a qualified acoustics and noise control engineer last week. The equipment was placed between Mr. Berka's property and the OfficeMax facility. That study was done over a 48-hour period and was completed the week of July 27, 2010. Our consultant is working on the report and once we receive the report, we will share the findings with the Board of Health. We have also asked our consultant to access sound and noise mitigation measures to determine what will work under these circumstances. The company is seeking specific noise suppression and mitigation measures that will be effective under these specific circumstances. Should the Board desire to view the operation or even conduct its own sound studies in the area, we are willing to provide access for the Board officials and their consultants. OfficeMax is committed to cooperate with the Town of Billerica to find a workable resolution. We are trying to be good neighbors. Things have changed and we are trying to take action to make our neighbors happy.

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

Mr. Kenyon commented that even though you reduced the backup alarms the noise is still above the allowable limits.

Mr. Michaud replied we may need to operate without backup alarms. The backup alarms are a safety measure.

Mr. Berube stated that he does not think you can eliminate backup alarms.

Mr. Michaud replied we have looked into it recently and it is not a DOT regulation. As a Manager of Transportation I thought it was a DOT regulation. It is a measure that can be taken.

Mr. Kenyon asked is there anyway you can work on a Saturday during the day.

Mr. Michaud explained the hours of operation. We start on Monday morning at 5:30 a.m. and we curtail our operation in the early hours on Friday night, Saturday morning. Not everything that goes out for delivery comes from our OfficeMax facility at 9 Progress Road. We have vendors that come in from other facilities. It is not possible for us to store all our items in this facility. Some of our supplies come from one hundred fifty (150) miles to our facility.

Mrs. O'Rourke asked Health Agent, Phavy Pheng if she would give a report on her investigation.

Ms. Pheng stated that she received a complaint from Mr. Berka. Ms. Pheng explained that when she conducted the inspection during the day she did not hear any noise. I spoke to Mr. Crowley regarding the operation and was informed that the trucks come in late at night and the supplies are unloaded between 10:30 p.m. and 3:00 a.m.

Mr. Michaud explained that the way the business works is that the customer has until 5:30 p.m. to place orders. We do not process the orders until after 5:30 p.m. There is no work being done during the day because the orders are not in the system to be packed.

Ms. Pheng explained the banging noise at night is what disturbs the neighbors and is a nuisance. However, I cannot verify the noise because we do not conduct inspections at night. I advised the neighbors to call the police when the noise occurs so that we can take further action.

Mr. Michaud stated that he is not saying that the business does not create noise. We are looking at what the sound study shows and how we can move forward from here.

Mr. Kane asked has your sound engineers reviewed the study that has been done.

Mr. Michaud stated that he does not know. Mr. Crowley would be able to answer that question. Unfortunately, Mr. Crowley was out of the state when this meeting was scheduled.

Mr. Kane stated so the nighttime operation is standard truck noise in and out, the loading and unloading of equipment, standard shipping and receiving, eighteen (18) wheelers loading and unloading and forklifts in operation.

Mr. Michaud replied the noise issue we are having is with the loading of our sixteen (16) to twenty (20) foot freight line trucks. The one thing about the sound study we conducted is that once the noise goes above a certain level it is recorded and can identify what the noise is. Prior to that it has been guess work. We are trying to address the concerns as we hear them. If the loading of the trucks is the problem maybe we could change the time of loading them to the first thing in the morning.

Matthew Vacaro, 61 Wildcrest Avenue identified himself. Mr. Vacaro stated that he has a few issues. Mr. Vacaro asked can OfficeMax regulate the backup alarms on the vendor trucks.

Mr. Michaud stated we can't, however there are no other trucks being parked in our yard prior to 6:00 a.m.

Mr. Vacaro asked are there any other trucks in the yard between 10:00 p.m. and 3:00 a.m.

Mr. Michaud replied there is probably one truck and it backs into the first available door, the furthest away from the residential neighborhood.

Mr. Vacaro stated that last week it was particularly quiet. Was that because of the study that was being conducted? Mr. Vacaro stated the Town of Billerica should hire an independent consultant to conduct a noise study.

Mr. Michaud replied nothing has changed since last week as far as I know. We have taken certain measures. OfficeMax would cooperate with the Town and be willing to provide access to the facility for the Board and their consultants.

Mr. Vacaro stated that about two (2) weeks ago you chose to resurface your parking lot and the company started at 6:30 a.m. What time does the town allow that type of work to begin? Our houses were shaking and vibrating. OfficeMax is not a good neighbor. Mr. Vacaro asked if anyone has had an opportunity to check out the drainage in the back conduit whether it drains into our backyard or drains out.

Mr. Berube stated we are still researching to see if there are any plans. It has been so long that we do not know if there are any plans. As Attorney Roelofs stated he could not find any plans. We are still looking.

Ralph Pagano, 47 Wildcrest Avenue, Billerica, identified himself. Mr. Pagano stated that the noise from OfficeMax has been terrible these last ten (10) months. When Boise Cascade was there everything was under control. Now we cannot sleep at least two nights out of the week. The noise just continues. The house was constantly shaking when they were repaving. They finished the paving job in two and a half days. We are not making up the noise. OfficeMax has ignored us.

Ajay Goel, 49 Wildcrest Avenue, Billerica, identified himself. Mr. Goel explained that he works from his home in the daytime hours. I had to switch to the night shift. I had to take my computer and go

to the basement to work because of the noise. When they were doing the paving my wife was very scared she thought it was an earthquake. When they were doing that work we thought we should have received a notice in the mail. I was disappointed that we did not receive any notification.

Mrs. O'Rourke pointed to the aerial photograph and asked what activity takes place in the neighboring buildings.

Mr. Berube replied that he did not know.

Mrs. O'Rourke asked Attorney Roelofs

Attorney Roelofs stated that he did not know but they are not part of the problem,

Mr. Vacaro replied pointed to one of the buildings and explained that it is Johnson O'Hare. They are strictly a sales and marketing company.

Mrs. O'Rourke asked what is the building furthest back in the top right hand corner.

Mr. Vacaro replied that building is on a hill and does not affect us.

Mrs. O'Rourke asked about the other large building in the top of the photograph.

Mr. Vacaro replied a van line used to be located there. That area is vacant and is much lower. It is thirty (30)-forty (40) feet lower. There is a hill that goes up between our properties. OfficeMax is a little higher so the noise goes into our living room and bedrooms.

Mr. Reader asked about the building across from Johnson O'Hare.

Mr. Vacaro replied it used to be a welding company.

Mr. Berube stated maybe that was the company that did van conversions for the handicap.

Mr. Vacaro stated that noise does not bother us because it only happens during the day and is not intrusive.

Attorney Roelofs stated that he would like to make a couple of follow-up comments. There seems to be some sympathy on the side of OfficeMax because they do not have control over their vendors. OfficeMax made a decision to use this facility ten (10) months ago and it was a bad decision. We are not looking to kick them out of Billerica. They have had a copy of our noise study since March 2010 and have had long enough to review it. They only hired a consultant when they knew about this meeting. It is going to take time for the Board to review the report and digest it. OfficeMax can curtail their hours of operation as a short-term measure. I think the Board should issue an order that puts short-

term limits on their hours so that while they are developing a long-term plan the neighbors are not suffering.

Mr. Berube explained that as he has said before, Public Health needs to be put back into planning and zoning because this is another case of when Public Health is not taken into consideration. We have seen this situation a number of times in other parts of the town. Noise complaints are one of the most difficult complaints to deal with. The Board appreciates all the work that Mr. Berka has done because it has given the Health Department solid information to work with. At this point we have not issued any orders. We have been working with OfficeMax and they have been very cooperative. OfficeMax has done their own noise study and they are going to give us a copy. They are going to develop a plan of correction based on that noise study. I discussed this matter with the Town Manger, John Curran, and he gave the Board approval to hire our own consultant to do a noise study if necessary. At this point I think we should wait to see the results of the noise study from OfficeMax. I can issue a letter to OfficeMax expressing the importance for them to produce a plan as quickly as possible and if the Board feels that they are dragging their feet or that no progress is being made we can issue them an order. As for restricting their hours I think it is a bit premature. They might decide the cost of doing business in Billerica is too expensive and leave. They are cooperating. This could start all over again if another trucking company tries to move into Progress Road. I think we should try to work with OfficeMax and bring this to a quick resolution. However it is the Board's decision.

Mrs. Giroux made a motion to continue the hearing until the next Board of Health meeting scheduled for September 13, 2010 in order to allow OfficeMax time to present to the Board its noise study along with a plan of corrective action on how they can improve their business based on the results of the study. The Board will review the study along with a report from the neighbors. Then the Board will take it under advisement.

Mr. Berube explained that he could send OfficeMax a letter issuing a deadline that the Board wants to see a plan before the September meeting so that if the Board wants to take further action they can.

Mr. Kenyon seconded the motion with Mr. Berube's amendment. So voted unanimously.

Mr. Kane asked if the Open Meeting Laws have gone into effect.

Mrs. O'Rourke explained that there is a new Open Meeting Law that went into effect on July 1, 2010. If anyone in the audience would like to ask a Board of Health related question at this time they may. Questions about any of the hearings will not be allowed because all the hearings are closed.

Donna Pizzo, 47 Wildcrest Avenue, Billerica identified herself. Ms. Pizzo stated that she took a survey in one of the Town of Billerica's papers regarding a dog park and she was wondering what the results were.

Mrs. O'Rourke stated that Mr. Berube would look into it.

Mrs. O'Rourke suggested that Ms. Pizzo contact Max Bowen of the Billerica Minuteman for more information.

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

No one else had any questions.

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

The Board adjourned at 9:40 p.m.

Respectfully submitted,

Sandra Giroux  
Secretary

Joanne M. White  
Recording Clerk