

**BOARD OF HEALTH MINUTES
SEPTEMBER 13, 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 August 9, 2010. Mr. Kane 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 the activity report that Health Agent, Phavy Pheng submitted for the month of August. Mr. Berube explained that Ms. Phavy has many ongoing complaints and a few court cases. The court case for the failing septic system at 78 Pinedale Avenue has been continued until November 1, 2010. The hoarding case at 483 Middlesex Turnpike is still pending. The owner is in the process of addressing the violations however the cleanup is taking a long time. The owner is currently living with a friend. The owner of 18 Mason Avenue is waiting for a de-leading certification. The owner was certified and de-leaded the house himself. Another case is the failing septic system at 8 Alrose Drive off High Street. A Show Cause Hearing will be held at the Northeast Housing Court on September 14, 2010. We have received complaints from the neighbors regarding the property at 31 Glad Valley Drive. The house appears to be abandoned and has not been maintained for years. The taxes and mortgage have been paid, the water has been shutoff and the electric meter is red tagged. We have not been able

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to contact the owner. There has also been a complaint regarding 6 Simmons Lane. Earlier this year we granted the owner a Waiver of Regulations to construct a shed. This complaint is for running a boarding/rooming house at 6 Simmons Lane. He also owns the property at 317 Boston Road where the Twelve Step Program is held. The Health Department, Building Department and Fire Department investigated the property at 6 Simmons Lane and found a few minor violations that were not serious. The Building Department stated that according to the Zoning By-Laws he is allowed to have six (6) unrelated people living in his house. That case will be closed. There have been ten (10) new cases of illegal dumping and nuisance complaints and five (5) new noise complaints. Three (3) of the noise complaints were from Iron Horse Park and 55 High Street. We are not sure where the noise is emanating from. We are still investigating this problem. Some of the noise may be coming from the businesses and trucks idling overnight. We also received a couple of odor complaints from residents at Bridle Road. We investigated the complaint and the odor appears to be coming from the river. The bank of the river is so low that an odor is emanating from the decomposing vegetation. There were two (2) complaints from Cambridge Tool located at 67 Faulkner Road in North Billerica. It seems that during the summer months when the windows are open, you can hear the noise coming from their operation. We met with the owner and he stated that he would address the situation.

Mr. Berube explained that Christine West, the Public Health Nurse continues to work with communicable disease cases, TB skin testing, walk-ins for back to school immunizations and lead testing for preschoolers. September 24, 2010 has been scheduled for school physicals for uninsured or underinsured students. Christine is currently planning the fall flu clinics. There will be one (1) at the Senior Center, one (1) at the Town Hall, one (1) in the Board of Health office and one (1) at the Locke Middle School. The State is encouraging school-based flu clinics. Children under grade 4 should see their pediatricians or come to the Board of Health office for their shots. They may need two (2) doses if it is their first time. Christine is continuing to plan other immunization clinics for the general public and the schoolteachers for the Tdap vaccine. She is looking into TB skin testing for approximately fourteen (14) firemen who frequently go to the Billerica House of Correction. Christine has ordered another Automated External Defibrillator (AED) unit and is working with EMT, Joseph Devlin to schedule the AED and CPR training. About 45 employees have signed up to participate in the training.

Mrs. O'Rourke explained that she received a call from one of the newspaper reporters asking if there have been any reported cases of West Nile Virus in Billerica. I told him that I did not think so however if I found out that we had a case of the West Nile Virus I would contact him.

Mr. Berube replied that the closest case of the West Nile Virus was in North Chelmsford.

Mr. Berube explained that the last activity report was from Health Agent, Angela Braun. Angela received a report from the Billerica Police Department that a complainant found a sewing needle in a sausage McMuffin at McDonald's, 273 Boston Road. Angela inspected the facility and interviewed the staff and could not find any further evidence. Angela reported the incident to FDA special agent, Don Henrick. Mr. Henrick interviewed the complainant and the McDonalds staff and there was not enough evidence to substantiate a further investigation. The report was filed with the FDA national information

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bank in case of another occurrence. Angela also received two (2) complaints regarding a strong methane odor on High Street. After talking with the Fire Department, Angela found out that the gas lines in Tewksbury were being purged for contaminants. The purging was completed on August 23, 2010 and the odors subsided. A resident reported that Bella Pizzeria located at 113 Boston Road had overflowing grease barrels. Angela investigated the complaint and the owner of the establishment explained that he switched from Baker Commodities to Envirotech for the yellow grease pickup. The odors were caused by the unenclosed oil drums from Baker Commodities that they have not picked up. Angela gave the owner a notice to contain his drums in an enclosure and clean up the mess. Pizza Express located at 135 Nashua Road has closed. Another party is interested in opening a roast beef establishment. Angela conducted thirty-one (31) Food Service Establishment inspections including the three (3) Market Baskets. At the last meeting Angela reported that Java's Brewin was having some issues and recommended that a consultant work with them. They are doing much better. The place is being maintained and kept clean. We are going to schedule a conference with the owner to review all the reports and to make sure they stay on track. Angela will be conducting a pre-opening inspection with Piece "ah" Cake on September 14, 2010. Casa de Pedro's opening has been postponed. They are waiting to receive approval for their liquor license. Angela and I attended a staff meeting regarding the possible renovation of Cumberland Farms at 301 Boston Road. The entire strip mall maybe demolished and then rebuilt. Angela will be inspecting all the food service operations at the Yankee Doodle Homecoming on Saturday, September 18, 2010.

Mrs. O'Rourke asked if there has been any update on the Billerica Mall.

Mr. Berube stated there have been a lot of rumors but nothing has come before the Health Department. Mr. Berube stated that he would keep the Board informed.

Mrs. O'Rourke stated that an individual expressed an interest in purchasing the Cove Restaurant. He asked me if there would be a problem. I told him that as long as he complied with the Board of Health Regulations there should not be any problems. I also told him that the place needs to be gutted and all new equipment will be needed to bring the establishment up to code.

Mr. Berube stated that he should check with the Planning and Zoning Boards concerning special permits and parking.

32 Sheridan Street

Mrs. O'Rourke stated the next item on the agenda is 32 Sheridan Street.

Mr. Berube explained that the Board of Health has been there on several occasions to check on the situation. We sent them a letter informing them that they cannot live there under the current conditions with the onset of the fall season. There is no running water, proper bathroom facilities or proper heating system in the camper. They are working with Early Intervention to help them find shelter. Hopefully they will find a place this month otherwise we will have to take further enforcement action.

Mr. Reader asked have they been looking for a place to live.

Mr. Berube replied that it is very difficult to talk to these people. They are working with their insurance company and they have an attorney. If they had repaired the house after the March storm event they would not be in this situation. But because they waited so long there is a lot of mold and the only thing that can be done is to tear the house down and rebuild it.

Mrs. O'Rourke asked do they have a bathroom.

Mr. Berube replied there is a portable toilet on the site.

Mr. Reader asked how many people are living there.

Mrs. O'Rourke replied a lot.

Mr. Berube stated that he would keep the Board informed of the situation.

Water Conservation Committee Report

Mrs. O'Rourke stated the next item on the agenda is the Water Conservation Committee Report.

Mr. Kenyon stated that the Committee met on August 18, 2010. At this meeting we were informed by the Drought Management Task Force that a Drought Advisory for the Central and Northeast Drought Regions of Massachusetts was issued, which includes Billerica. This Drought Advisory is the second of five action levels related to the drought conditions, which warrants closer tracking by state, federal and local agencies. After receiving this information and having no water flowing over the dam in North Billerica, the Water Conservation Committee recommended to the Board of Selectmen and the Department of Public Works that they should consider a Stage 3 water ban. A few days after the recommendation we received some rain but the water level is still very low. We are still in the Stage 2 water ban. We were very close to a Stage 3 water ban, which meant no automatic outdoor watering.

Mosquito Control Program

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

Mr. Berube explained that mosquito spraying ended on September 2, 2010. Central Mass Mosquito Control is still checking for West Nile Virus and EEE. As I mentioned earlier West Nile Virus was found in North Chelmsford and spraying was done in those neighborhoods that were affected. With the cooler temperatures at night the mosquito activity should be less. If any problems should occur in Billerica we will take appropriate action by spraying the affected areas.

National Takeback Initiative

Mrs. O'Rourke stated the next item on the agenda is the National Takeback Initiative.

Mr. Berube explained that this program was brought to his attention by a Billerica resident. I contacted the Police Chief, Dan Rosa and we discussed this program. The Police Department will host the National Takeback Initiative on Saturday, September 25, 2010 from 9:00 a.m. to 1:00 p.m. at the Department of Public Works yard to collect all expired, unwanted or unused pharmaceutical controlled substances and other medications. The Health Department will participate on that day.

Allergen Awareness Regulation

Mrs. O'Rourke stated the next item on the agenda is the Allergen Awareness Regulation.

Mr. Berube explained that Angela Braun mentioned this new regulation at the July 7, 2010 Board of Health meeting. By October 1, 2010 this will be in effect. Each Food Service Establishment has to comply with three items. It primarily effects all the establishments that have menus. It is menu driven. First, Food Allergy Posters must be posted in the employees work area. Second is that all menus will be required to have specific wording about food allergies. The third is that each establishment will be required to have one certified food manager obtain a food allergy awareness certification from a Massachusetts Department Public Health approved vendor which will be at an additional cost for that establishment.

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

The Board Members did not have any questions.

Mr. Berube stated that Massachusetts will be the first in the country to implement this allergy regulation.

McFarland Cascade Progress Report

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

Mr. Berube explained that GZA is still working on finalizing their reports. The Board of Health will receive a copy of GZA's report that they submit to the Department of Environmental Protection (DEP). I contacted DEP and told them that I would like their review of the report that GZA submits. I told DEP that I was concerned about the thoroughness of GZA's investigation.

Mrs. O'Rourke asked Mrs. Palermo if everything was good on Ashdale Avenue.

Mrs. Palermo replied yes, the smell is gone.

Mr. Berube explained that work is being done on capping the asbestos lagoons at Iron Horse Park. The Board of Health has received a few calls complaining that trucks have been going in and out of Iron Horse Park. The Department of Environmental Protection and the Environmental Protection Agency are involved in overseeing the work that is being done.

7:15 p.m. Richard Annese – 21 Topliff Street – Request Variance for work within 25 feet of Flood Plain

Mrs. O'Rourke stated the first hearing is Richard Annese, 21 Topliff Street, requesting a Variance for work within 25 feet of the Flood Plain.

A large plan of the proposed house was shown to all the Board Members.

Joel Williams, Dresser, Williams & Way introduced himself. Mr. Williams explained that he was representing Richard Annese. The variance is to construct a house within 25 feet of the FEMA Flood Plain. The Conservation Commission has approved this project. The project involves tearing down the existing house and reconstructing a new house on the same footprint. The driveway will be moved to the other side of the house. The proposed house will be twelve (12) feet off the FEMA Flood Plain. That is why we are requesting a variance.

Mrs. O'Rourke asked is the proposed dwelling going to be on town sewer.

Mr. Williams replied yes.

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

Mr. Williams replied he thought the house was going to be a two (2) story.

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

The Board Members did not have any questions.

Mr. Berube explained that he does not see any issues with this project. The flood plain is associated with the stream that flows to the Shawsheen River. Mr. Berube asked Mr. Williams what the Conservation Commission's comments were regarding the stream?

Mr. Williams replied the Conservation Commission considered the stream to be the flood plain.

Mr. Berube stated that the plans show there is no actual construction in the flood plain.

Mrs. O'Rourke stated that she wanted to ask a general question. After a house is completed how long do the hay bales and silt fence have to remain at the structure? Is there a rule that specifies the amount of time?

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Mr. Williams replied generally the Conservation Commission looks at the disturbed surface and what is taking place. Once everything is stabilized the hay bales and silt fence could be removed. Sometimes a Certificate of Compliance may be required before the homeowner or applicant removes the silt control.

Mrs. O'Rourke asked whose responsibility is it to remove the hay bales and silt fence.

Mr. Williams replied either the applicant or the homeowner. In this case, Mr. Annese will apply for the Certificate of Compliance so he will remove the silt control. Whoever applies for the Certificate of Compliance usually is the one to remove that control.

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

Don Bears, 26 Topliff Street, identified himself. Mr. Bears asked is the house going to be the same format as the one directly opposite it.

Mr. Williams replied he thinks so.

Mr. Bears replied that he has no objection to the proposed house.

Justin Barton, 23 Topliff Street, identified himself. Mr. Barton asked how high is the house going to be. Is it going to block my view?

Mr. Williams replied he does not know the actual dimensions.

Mrs. O'Rourke suggested that Mr. Barton get in touch with Mr. Annese.

Mr. Berube commented that it would probably be a two (2) story house.

Mr. Kane asked about the figures of the basement floor elevation on the proposed plans. It states that the basement floor elevation is 97 and the flood plain elevation is 98, is the basement floor going to be below the flood plain elevation?

Mr. Williams explained that the criteria is that the basement floor be two (2) feet above ground water.

Mr. Kane asked what is the water table.

Mr. Williams explained that test pits will be done prior to applying for the building permit so that the basement floor elevation floor will be established.

Mr. Reader made a motion to grant a Variance of Board of Health Rules and Regulations, Chapter 5, Section 5.5.005 (1) (2) in order to construct a single family dwelling within twenty-five (25)

feet of Flood Plain at 21 Topliff Street based on the following findings of fact and pursuant to the following conditions:

FINDINGS OF FACT

- 1) The work described in the applicant's request is within an area subject to protection under the Billerica Health's Rules and Regulations, Chapter 5, Section 5.5.005 (1) (2).
- 2) The applicant proposes to raze an existing dwelling and construct a new single family dwelling. The new dwelling will be serviced by town water and sewer.
- 3) The location of the proposed dwelling will be within twenty-six (26) feet and twelve (12) feet respectively of the Green Engineering Flood Plain and the FEMA Flood Plain. There will be no filling within the flood plain.
- 4) The Board of Health has determined that the actions proposed by the applicant are adequate measures to protect the public health and environment and complies with the intent of Board of Health Rules and Regulations. Further, approval of the applicant's request will not be detrimental to the public health and environment.

CONDITIONS

Standard conditions number 1, 2, 3, 4, 5, 6, 9, 10, 11, 12, 13, 14, 15, 16, 18, 25 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 Dresser, Williams, & Way, Inc. dated June 14, 2010 and revised to August 2, 2010 and stamped by Joel Williams RPE#29522.
- B) These conditions must be properly recorded at the Registry of Deeds and a certified copy of these conditions must be returned to the Board of Health office indicating that a marginal reference was made on the original deed, prior to the Health Department approval of any building permit, occupancy permit, certificate of compliance, etc.
- C) A deephole test must be performed at the proposed location of the proposed dwelling to determine the groundwater elevation. The minimum vertical separation distance from the basement floor above the high ground water elevation shall be two (2) feet pursuant to Billerica Health Regulations. Documentation must be submitted to the Board of Health prior to the approval of any permits.

Mrs. Giroux seconded. So voted unanimously.

7:25 p.m. Philip Poor – Zackney Estates – Request Reissuance of Subdivision Approval

Mrs. O'Rourke stated the next item on the agenda is Philip Poor, requesting a reissuance of the subdivision approval for Zackney Estates.

Philip Poor, owner of Zackney Estates, identified himself. Mr. Poor explained that he is requesting a reissuance of the subdivision order of conditions and a review of the bond requested by the Board of Health. Mr. Poor explained that he has talked to Mr. Berube about this project.

Mr. Berube explained that when this project started Mr. Poor constructed 85 to 90% of the infrastructure and the roadway. The project sat dormant for ten (10) months because of financial difficulties and bad timing. Mr. Poor is committed to the project and wants to see the project through. Recently he came to me and stated that he would be able to develop a couple of the lots.

Mr. Poor explained that things have turned around and one of the lots is under agreement. He explained that he has been cleaning the detention pond and catch basins, maintaining the property and replacing the hay bales and making sure that the road is kept clean. Mr. Poor explained that in the winter he made sure there was no puddling in the street.

Mr. Berube explained that when Mr. Poor came to me I checked the variance and noticed the project approval and variance had expired. I informed him that he could not apply for an extension. I told him that he had to file for a reissuance of the original approval. Included in the Board's package is a copy of the original approval. All the drainage is in and working. About 90% of the remaining infrastructure is in. I do not see any problem with reissuing the approval. Mr. Poor is requesting that the Board waive the bond requirement. Typically we require a bond to ensure that all the drainage goes in as approved. The drainage is in and has been inspected by Woodard & Curran. He already has a bond with the Planning Board. At this time a bond would be very miniscule because of the work that has already been done. I don't see the necessity for a bond where he has done all the work that the Board requires. This would be the one lone exception because most of the work is done, however it is the Board's decision.

Mrs. O'Rourke asked how much would the bond be for the remainder of this project.

Mr. Berube replied it would probably be a couple of thousand dollars.

Mrs. O'Rourke asked if this project is on septic or sewer.

Mr. Poor replied the project is on town water and town sewer.

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

Mrs. Giroux asked would the Board be setting a bad precedence by not requiring a bond for this project.

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Mr. Berube explained that he has not posted a bond yet because he has not gone forward with construction of any houses until now. He has completed all the drainage work and the majority of the infrastructures. Usually the drainage work is not done until the subdivision is completed.

Mrs. Giroux stated that where all the work is not completed and it is only a small amount the Board does not want to set a bad precedence

Mr. Poor stated that he has posted a two hundred ninety-five thousand (295,000) dollar cash bond with the Planning Board.

Mrs. Giroux replied that the Board of Health requires a bond. I do understand you have a bond with the Planning Board but I do not want to set precedence for other projects.

Mr. Reader asked could it be on a case-by-case basis.

Mr. Berube explained that Condition #36 states the applicant shall be responsible for insuring the proper construction of the stormwater management system. In the event that the system fails or does not perform as designed during the five (5) year period after occupancy and completion of the five (5) lots and roadway, the applicant or its successor shall be responsible for repairing or correcting the system. This is unique. We have never had this before. In this case the owner has a great deal of responsibility. It is five (5) years from when the last house is occupied. Mr. Poor could have the responsibility of maintaining everything for the next 10 to 15 years.

Mrs. O'Rourke asked Mr. Poor if he is aware of that.

Mr. Poor replied yes, that was a big part of the approval process.

Mr. Berube explained this is an unusual condition but that is what was proposed and we accepted.

Mr. Poor explained that after five (5) years the homeowners association will be taking over and will be responsible for maintaining the detention ponds. I will be putting money into a fund after the sale of the first house.

Mrs. O'Rourke asked where will the house be built.

Mr. Poor replied lot 6, the second lot on the left.

Mr. Reader stated the house is already framed.

Mrs. O'Rourke asked if anyone in the audience has an interest in Zackney Estates off Allen Road.

No one in the audience had any questions.

Mrs. O'Rourke asked if the two thousand (2,000) dollar bond would create a hardship.

Mr. Poor replied no he could take care of that.

Mr. Kenyon made a motion to grant the reissuance of the Zackney Estates Definitive Subdivision Approval Order of Conditions of the Billerica Rules and Regulations Chapter 5, Sections 5.5.005 (1) and (2) in order to construct in and within one hundred (100) feet of flood plain and also to include the posting of a twenty-five hundred (2,500) dollar bond based upon the following findings of fact and pursuant to the following conditions:

FINDINGS OF FACT

1. The work described in the applicant's request is within an area subject to protection under the Billerica Board of Health Rules and Regulations, Chapter 5, Section 5.5.005 (1) (2).
2. The Board of Health conducted a public hearing on September 13, 2010 and properly notified abutters in accordance with Billerica Health Regulations, Chapter 1, Section 1.2.007.
3. The project was reviewed by Jeffrey Stearns, P.E. of Woodard & Curran, Inc., the Board of Health's Consulting Engineer, for potential impacts to the Flood Plain as well as compliance with applicable drainage regulations.
4. Previously, the Board of Health granted approval for this project on May 5, 2008.
5. Presently, the stormwater drainage system and much of the infrastructure has been completed. The stormwater drainage system has been inspected by the Board of Health's Consulting Engineer. However, the building lots have not been developed and the Order of Conditions has expired. The owner seeks to complete the project in accordance with the conditions of the original definitive subdivision approval.
6. The Board of Health will impose reasonable conditions to ensure the project is constructed in accordance with approved plans.
7. The Board of Health has determined that the actions proposed by the applicant are adequate measures to protect the public health and environment and complies with the intent of the Board of Health Rules and Regulations. Further, approval of the applicant's request will not be detrimental to the public health and environment.

CONDITIONS

Standard conditions number 1, 2, 3, 4, 5, 6, 8, 9, 10, 11, 12, 13, 14, 15, 16, 18, 25, 26, 27 and 29 in accordance with the Board of Health regulations and Special Conditions:

- A. All construction must be accordance with plans and reports submitted for review and approval prepared by Polaris Engineering Corporation, dated August 9, 2007, revised to July 1, 2008 and stamped by Nicolas M. Reitzell III, RPE#42694 and William F. Drude Jr., PLS#32893.
- B. Final approval of comprehensive plans must be obtained from Woodard & Curran, the Board's Consulting Engineer and the Director of Board of Health prior to the approval of any permits.
- C. Proof that a NPDES (National Pollutant Discharge Elimination System) Notice of Intent has been filed with the EPA (Environmental Protection Agency) shall be provided to the Board of Health prior to the approval of any permits. Furthermore, the applicant or his contractor shall submit copies of the NPDES Inspection Reports to the Board of Health and the Board's Consulting Engineer.
- D. A proper Operation and Maintenance Plan for the subdivision stormwater drainage system must be approved by the Board of Health and the Board's Consulting Engineer prior to the approval of any occupancy permits.
- E. A Homeowner's Association shall be formed for the purposed of providing maintenance for the stormwater drainage system serving the subdivision. Homeowner's Association documents shall be submitted to the Board of Health for review and approval prior to the approval of any occupancy permits. Said documents must include language covering the association's responsibility for maintaining the drainage system and shall reference the approved Operation and Maintenance Plan for the system.
- F. The property deeds to each dwelling shall contain language approved by the Board of Health regarding the owners' responsibility in conjunction with the Homeowner's Association for maintaining the drainage structures in accordance with the approved Operation and Maintenance Plan for the drainage system.
- G. The Board of Trustees for the Homeowner's Association must provide a list of all office holders and their contact information (addresses, phone numbers, etc.) to the Board of Health on or before December 31st of each year.
- H. The applicant or the Homeowner's Association shall submit annual maintenance reports for the stormwater drainage system to the Board of Health.
- I. The applicant must provide a construction schedule for inspections to be performed by the Board of Health consulting engineer which must be approved by the Health Department. In addition,

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a pre-construction meeting involving the Health Department, the project design engineer, the Board of Health consulting engineer, the project construction site supervisor and any other interested parties shall be held to review construction plans, sediment and erosion control plans and to plan for all necessary inspections. This meeting shall be required prior to the approval of any permits by the Board of Health.

- J. The stormwater drainage and infiltration systems shall not be back filled until an inspection has been conducted by Board of Health's consulting engineer or a representative of the Board of Health and permission has been granted to backfill.
- K. Upon completion of the stormwater drainage system, a preliminary "as-built" plan of the drainage system shall be submitted to the Board of Health and the Board of Health's Consulting Engineer for review and approval before paving over any drainage structures.
- L. Each lot shall be limited to a maximum of three thousand (3,000) square feet of impervious area. The applicant shall provide an "as-built" plan identifying all impervious areas along with the total square footage prior to the approval of an occupancy permit by the Board of Health.
- M. The applicant shall provide confirmatory test pits at the location of the building foundations. This test pit shall be performed to confirm groundwater elevations. The final design of each lot; dwelling locations, dwelling footprints, test pit information and proposed grading shall be submitted to the Board of Health for review and prior to receipt of a building permit. After construction is complete, the applicant shall provide an "as-built" plan which at a minimum shall depict the elevations of the basement slab, finished floor and final topography prior to issuance of an occupancy permit.
- N. The applicant shall provide confirmatory test pits at the location of the proposed under ground roof infiltrating units. This test pit shall be performed to confirm groundwater elevations and soil conductivity. Test pits shall be performed by a Massachusetts Soil evaluator or Registered Professional Engineer. The applicant's engineer shall submit the soil logs, test results and an "as-built" elevation of the under ground infiltrators prior to issuance of an occupancy permit.
- O. The applicant shall contact the Board of Health or their designee prior to placement of the basement slab and underground roof leaching structures in order to inspect the Estimated High Ground Water (ESHGW) within the excavated limits of work.
- P. The applicant shall be responsible for insuring proper construction of the stormwater management system. In the event that the system fails or does not perform as designed during the five (5) year period after occupancy and completion of the five (5) lots and roadway, the applicant or its successor shall be responsible for repairing or correcting the system, including all associated expense so that the system functions as designed.
- Q. The final grading on each lot shall be consistent with the approved plans, drainage report

and the submitted post development watershed plan. Any changes shall require immediate notification to the Board of Health by the Design Engineer and applicant. Further review and approval may be required at that time.

- R. This Variance supersedes Variance #08-52-1-3-23-012 granted by the Board of Health on May 5, 2008.

Mrs. Giroux seconded. So voted unanimously.

7:35 p.m. OfficeMax – 9 Progress Road – Continued Hearing for Noise Nuisance

Mrs. O'Rourke stated the next item on the agenda is OfficeMax continued hearing for noise nuisance.

In the Board of Health's records there are copies of all correspondence and affidavits from Attorney Jeffrey Roelofs and the sound study conducted by Eric Wood, Acentech. There is also correspondence and a noise reduction plan from OfficeMax and a sound study conducted by James Cowan from URS.

Brian Freese, Senior Director for Facilities Strategy at OfficeMax, identified himself. Mr. Freese explained that he was present to address the activity at the OfficeMax facility. Mr. Freese stated that he would like to explain what happens at the OfficeMax facility before he explains the noise reduction plan. The facility was built in 1984 and we opened for business in 1985. We currently send our trucks out early in the morning for next day delivery. We operate today the same way we operated in 1985.

Mrs. O'Rourke asked how many trucks do you have at the facility.

Mr. Freese replied that OfficeMax has 16 private delivery trucks that go out to the metropolitan area. There are a couple of trucks that come into the facility with inbound freight from our main facility. So there are about 18 trucks going in and out of the facility. In 1995 our business had grown so we leased a place down the street and stored most of our paper products there. We also moved the delivery fleet down there. That facility ran until January 2010 and due to the decline in the economy we found that we no longer needed that facility and could operate out of one facility so we moved the delivery fleet to 9 Progress Road. The acoustical company that was hired by Mr. Berka mentioned that shipping overnight is a matter of convenience and not a requirement and could be scheduled during the daytime operations. For a company like ours any business that has next day delivery has to operate their fleet at night. We receive orders during the day and until 5 p.m. then we load our trucks at night. This is not a matter of being malicious. We are good neighbors. Mr. Freese explained that he has been with the company for over twenty-two (22) years. I have dealt with over one hundred (100) companies and this is the first time we have had a complaint of this sort. We are not doing anything malicious; it is just a matter of doing business. We hired URS to do a sound study. URS found that we are in violation of noise between 10 p.m. and 7 a.m. It does not happen all the time. We have received a quote for a soundproofing wall from Premier Fence. We talked to three (3) different companies. Premier Fence

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installs the acoustical deadening walls along the highways. They have proposed an 18 to 20 feet high wall made out of timber and plywood. There will be plant rock and stone at the bottom to make sure there is access for snow removal in the winter and that no weeds will grow under and around the barrier. The wall will be over three hundred (300) feet long. Mr. Freese explained the wall will run the full depth of the dock, turn the corner and run an additional sixty (60) feet. However, there is no guarantee that the night time limits will not be exceeded. We have reduced the amount of traffic and turned down the backup alarms as low as we legally could. If the wall does not work we cannot do anything else. Mr. Freese asked if anyone had any questions.

Mr. Kenyon asked can't you change the time of processing the orders and reschedule the packing of the trucks. You may be a little late in the lead-time but within a week you will be on a different schedule for your customers.

Mr. Freese explained we can't have all our sixteen (16) trucks loaded before 10 p.m. Our customers can order until 5 p.m. It is not possible to pack the trucks by 10 p.m. in order for them to be ready for delivery the next morning. We do not have to pack the trucks for our retail facilities because those deliveries are not required to have next day delivery.

Mr. Kenyon stated so no matter where you go you will always be in violation of the Massachusetts State Law.

Mr. Freese replied only if we are that close to residential homes. I have dealt with over one hundred (100) facilities and we have never been zoned this close to houses. We started construction in 1984 and the operation began in 1985 at that time only one (1) house was constructed. In over twenty (20) years with this company I have never had an issue like this. With this type of business I do not have another option. The estimated cost of the fence is \$212,000.00. Since we don't have a guarantee that there isn't going to be some noise at night, even though it will be better, I need feedback from the Town saying this is a good fix. If the town comes back and tell us that we are still in violation, then the Board will be dealing with my successor. We can't build this wall without some kind of feedback from the Town.

Mrs. O'Rourke asked Mr. Berka if he would like to add any comments at this time.

Mr. Berka stated that he would like his Attorney Jeffrey Roelofs, and Eric Wood, acoustical engineer from Acentech to speak first.

Attorney Roelofs stated that Eric Wood can speak first and then he would follow with a few statements of his own.

Eric Wood, Acentech Inc. in Cambridge, MA, identified himself. Mr. Wood stated as OfficeMax has indicated they hired James Cowan from URS Corporation to measure and report the noise levels adjacent to the OfficeMax distribution center and the residential community. His results and my results were similar. The sound level meter was left near the northern property line shared with the residential

property at 51 Wildcrest Avenue. Mr. Cowan stated that he has no recordings between 50 and 65 dBA that were produced by nighttime OfficeMax trucking operations. Mr. Wood commented that the results of the audio recording revealed that most of the elevated signals resulted from birds and aircraft flyovers. Mr. Wood commented that in his experience birds seldom create loud sounds during late nighttime hours. The birds sleep at night. Mr. Cowan stated that the violations were due to the intermittent noises from OfficeMax. The neighbors have been testifying to the intermittent loud banging noises at the OfficeMax facility. There is a lot of similarity. Mr. Cowan stated that a properly designed noise barrier located between the OfficeMax facility and the nearby homes could probably reduce the OfficeMax noise to within the limit when they have only one (1) truck operating, when there was multiple trucks operating it would go over the limit. I suggest an experienced noise engineer design the barrier. The design should include an adequate margin of safety. I believe the barrier should be designed to reduce the noise at the property line and also at the neighborhood homes. Some of the homes are two story houses. It is not clear where the noise study was conducted. I strongly recommend that the Board retain an outside qualified noise consultant to review the information OfficeMax has submitted. I suggest that OfficeMax reimburse the Town for the cost of the consultant. In January 2010 the operation went from infrequent to frequent. Trucking operations are not quiet. OfficeMax should have known that consolidating their trucking, loading and unloading operations at this location would increase significantly the unnecessary and disturbing noises within the adjacent residential neighborhood. If OfficeMax were operating an ambulance service and there was an emergency then the neighbors would understand. The delivery of pens, paper clips, pencils and rubber bands are not critical. They are routine office supplies. Mr. Wood pointed and explained to the Board with the proposed sound barrier and with one (1) truck, the sound would be 50 dBA near those homes. That is how OfficeMax operates every night. OfficeMax is violating the Town regulation so that they can deliver products in the morning. I would think that OfficeMax could call their customers and explain that there is a problem and they were not going to make deliveries early in the morning.

Attorney Jeffrey Roelofs, representing Mr. Berka identified himself. Attorney Roelofs explained that he submitted a package for the Board by Email and Federal Express. The package includes a copy of a second affidavit from Mr. Berka with exhibits where he explains the ongoing noise that he is being confronted with, a report from Mr. Woods regarding the memo from URS, OfficeMax's noise study and a copy of a legal decision. Attorney Roelofs stated that he would like to focus on some of the issues. This Board has the legal authority to enforce the law. The situation is that the law is being violated. OfficeMax has to comply with the noise standards and if they can't they need to come up with an effective mitigation plan so that they can comply or they need to change their operation. If they can't comply they can't do what they want to do. Attorney Roelofs explained what he thought the Board should do. Attorney Roelofs stated that the Board should retain a peer review consultant. OfficeMax should submit a package of an effective mitigation plan. OfficeMax needs to show more details on the specifics of the acoustical barrier. The peer review consultant should see the height of the barrier. The peer review consultants report needs to be submitted to the Board before the next Board of Health meeting. The goal should be to achieve compliance. Attorney Roelofs stated that Mr. Berka has been awoken at all hours of the morning. Mr. Berka has not been able to sleep in his own bed. He has been running his air conditioner to block out the noise. The Board has given OfficeMax a month to finish its study and come up with an effective mitigation plan and they have made some progress however I think

that the Board should impose some limitations on the time of operation. I think the trucking and loading activities should be prohibited when people are trying to sleep. Once the effective mitigation plan is approved by the Board the hours of operation can be lifted. I think you should ask them to start that as soon as possible. I don't think it is fair to the neighbors to give them more time when this has been going on since March 2010. In terms of expenses OfficeMax has commented that it has cost them \$7,500 but they are the ones violating the law. Mr. Berka has spent more than twice that as the homeowner just to get this to the point to where someone is paying attention.

Tom Berka, 51 Wildcrest Avenue, identified himself. Mr. Berka stated that he is grateful for this Board's indulgence in presenting my case on behalf of my neighbors and myself. I encourage the Board to read both my affidavits that have been submitted. The point I have tried to make in both my affidavits is the suffering that my neighbors and myself have endured. This is a decision that we learned about after we were offended and disrupted in our lives since January 2010 when the trucking activity was consolidated at the 9 Progress Road facility behind my home where I have lived for ten (10) years. It took me a long time to understand the law and understand the Town government and who I should go to with a problem such as this. After I figured out that I had to give the Town objective evidence, I consulted with Acentech an acoustical engineering firm. I tried to give the Board the best objective scientific data I could afford. The Board should hire their own consultant. These violations have consequences and that is a disruption in our lives. These trucks are slamming, banging and pounding at all hours of the night when we want to sleep in the sanctuary and the peace of your own home. This is an abuse that I cannot escape from. There is no way for me to escape the noise in my home. We have been good neighbors. My neighbors have signed affidavits that they agree that this activity has disrupted their lives. When there are multiple trucks running there is no way for me to escape this noise in my home. I have heard all kinds of false statements of the law. At one a.m. I was bawled out by one of the Billerica Police Officer's because I called to report the noise. The Police Officer told me that he would not file a report because there was no criminal offense and no one to arrest, after I told him that the Police Chief Dan Rosa told me to call so that I could provide the Town with objective evidence of this abuse. That is when I did a lot of research and found Mr. Wood. I used my own money to hire Mr. Wood. Mr. Wood has over thirty (30) years of acoustical engineering experience. He instructed me on how to help him conduct this measurement. He made it clear that I had to observe this activity or he would not put it in the report. He told me to keep notes. There are nights when I cannot take it anymore. We have done our best to give the Board scientific and objective evidence. You have seen and heard the testimony and affidavits of my neighbors and me. No one is trying to shut this company down. Remember the mandate is to protect the health and well being of your fellow residents. We are human beings in Billerica and we have been interrupted, disrupted and abused by a company who has dealt with trucks for over forty (40) years and told us that they don't know where the noise is coming from. When you allow someone to continue to violate the law, there is a consequence. This is a very emotional thing for me. It is a terrible thing not to sleep in your own home or be disrupted at two a.m. I have documented these events in both my affidavits. Every Board of Health has the authority to implement and enforce those laws to protect this type of abuse. We are your fellow residents and it is a horrible thing not to be able to sleep in your own home. I am asking the Board to assert your authority to make a finding to enforce these laws in our town and in our neighborhood.

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

Matthew Vacaro, 61 Wildcrest Avenue identified himself. Mr. Vacaro explained that we completely agree with Mr. Berka. We live right near Mr. Berka. The noise from the loading dock is slamming and banging at all hours of the night. When I go home tonight the noise will occur at 10 p.m. and will be the same. They don't care about us. The manager that moved the operation up to this area needs to lose his job.

Mrs. O'Rourke asked Mr. Freese if he would like to respond.

Mr. Freese stated we do care what goes on. We do not have a facility in Boise, Idaho. From the operational standpoint it is what it is. We are not here to ignore or treat anyone like insects. We are good neighbors. We have submitted our mitigation proposal. We have operated like this for the past ten (10) years. I didn't make the decision to move the operation back to 9 Progress Road. I think Mr. Wood's comment to hire a third party sound engineer is a good idea. Mr. Freese stated that he would discuss the proposed sound wall with Mr. Berube. As far as our operating hours it is what it is. We cannot tell our customers that they will not get their delivery until later in the day when there are other businesses such as Office Depot or Staples that will deliver their supplies first thing in the morning. It would put us out of business. If this proposal does not work then we will have to discuss the alternatives.

Mr. Kane stated that he is concerned with the statement it is what it is. Your own sound engineer stated that the plan as proposed with one (1) vehicle should be adequate to bring it in to compliance but when there are seven (7) vehicles on the site it would not be in compliance. The plan that is designed is out of compliance. The Board does not want OfficeMax to spend \$212,000 on a plan that is not going to work and does not address the issue. Having you spend that kind of money for a plan that will not meet compliance does not help the Board, the residents or OfficeMax. This has been going on for a long time. What other mitigation measures other than turning down the backup alarms have been done.

Mr. Freese stated that he does not know what other operational changes have been made. We have not implemented changing the dock plates because that will probably not help. Mr. Freese stated he could not speak about any other operational changes. Mr. Freese asked Chris Machaud if he had any comments.

Chris Machaud replied that the operational changes were addressed at the Board of Health meeting on August 9, 2010.

Mr. Kane stated that the mitigation plan will unlikely be effective for the operations as described. It will make the situation better but the Board wants it right. I am concerned with your level of commitment to bring the noise into compliance.

Mr. Freese replied the company would not guarantee that the mitigation plan will be effective.

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Mr. Kenyon stated that he does not understand why something has not been done to the process. There are simulation programs and industrial engineers that are trained to redo a process. This is not going to go away. If you know the sound barrier is not going to work you have to change the process to fit the hours that the state law requires.

Mr. Freese replied as far as the delivery it is not going to come out of a computer. A truck can only drive so many hours a day. For next day delivery that is how that model works. We can talk about a third party and refining the design. Mr. Wood and URS will not guarantee the results of the wall even if it says it will be in compliance, they won't guarantee it.

Mr. Kenyon asked how do you plan on complying with the law. How are you going to fix the problem?

Mr. Freese replied that if the petitioner's expert looks at that design and agrees that the wall is going to work, we need to get that in writing. Then OfficeMax will go forward with the plan. I don't know if there is a company that will guarantee that the wall will work.

Mrs. Giroux stated that there is no company that will guarantee it. You will have to find a company other than the one that you are dealing with. You can't do a model with one truck. How long will it take to do a model with eight (8) trucks? I think you need to find another company because this wall is not going to work. The drop in decibels that you are anticipating is not going to bring you into compliance. You need to find someone that is going to work with you and come up with a better plan. You need to work with Mr. Berka, his attorney and acoustical engineer. I understand that you have to compete with other companies. People want their supplies when they want them and if you are not going to guarantee that somebody else will. You need to find a way to make the neighbors happy and you need to keep the business happy. Your biggest liability is your neighbors. I recommend that you find a new acoustical engineer and redo the wall model. The noise by-laws have changed in the past ten (10) years.

Mr. Freese stated that we have been doing business at the 9 Progress Road facility for ten (10) years and he did not know that the noise by-laws have changed.

Mr. Reader asked can you change the time of shipping the customer orders.

Mr. Freese replied that most of the orders come in after lunch. That is the competitive environment that we work in.

Mr. Reader stated an alternative would be to change the hours of shipping.

Mr. Freese replied if we cannot come to an agreement with the Board, OfficeMax will cease shipping operations at the 9 Progress Road facility. We will not continue to operate at that facility.

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Mr. Berube stated that we have been given a great deal of information tonight. I agree with Mr. Berka's attorney that we should engage the services of our own consultant to study this situation. As mentioned by the other Board Members I am also not sure that the wall is going to resolve the problem. The Board cannot give any assurance that if we accept their plan that there won't be any future noise violations. As Mr. Freese mentioned they may have to cease operations at that location. It seems that the only way the wall will work is if they curtail some of their nighttime operations. However it doesn't appear that OfficeMax is willing to do that because it is part of their operation. We need to study this a little more and come to a resolution by the next meeting. Mr. Berube recommended that the Board retain the services of a consultant and continue to have discussions with OfficeMax. Mr. Berube explained if we reach an impasse he would issue an order. It seems that if they can't fix the problem with the wall they will cease operations at the facility. One way or another this issue will be resolved by the next Board of Health meeting.

Mrs. O'Rourke stated that it will be very difficult for anyone to guarantee a wall. Mrs. O'Rourke suggested that maybe OfficeMax could take a look at their hours of operation while the Board retains a consultant.

Mr. Berube stated that maybe with the involvement of our consultant we can come up with an alternate plan.

Mrs. O'Rourke asked Mr. Freese if OfficeMax could take a look at their operations and see if there is something that they could do to give the neighbors a little relief while the Board is retaining a consultant.

Mr. Freese replied that he would do that.

Attorney Roelofs stated that the way he understands it is if all three (3) consultants agree with a plan that is better and is going to achieve compliance, OfficeMax will agree to the plan. At that point OfficeMax will be looking for the Board to document in writing that once the plan is completed and if the plan does not work the Board is not going to enforce the law.

Mrs. O'Rourke stated that she did not get that impression at all.

Attorney Roelofs stated that the Board cannot waive the law.

Mr. Kane stated that was implied by OfficeMax in the memo dated September 10, 2010.

Mr. Berube replied that the Board cannot give that kind of assurance. We are an enforcement agency and we cannot give that kind of a relief.

Mrs. Giroux made a motion to continue the hearing until the October 4, 2010 Board of Health meeting. The Board will give Mr. Berube the authority to engage the services of an acoustical engineer

and report back at the next meeting. Mrs. Giroux asked OfficeMax if they could curtail their operations in order to give the neighbors some relief from the noise for the next month.

Mr. Freese stated he can't guarantee that could be done, but he would look into it.

Mrs. O'Rourke asked if Mr. Freese could look into rescheduling some of the deliveries.

Mr. Freese asked Mr. Berube if he would talk to Mr. Radocha.

Mr. Kenyon seconded. So voted unanimously.

Mr. Wood asked why the Board is allowing OfficeMax to continue operating at night, there must be a reason. Why is the Board allowing them to continue to violate the law?

Mr. Vacaro stated when I go home at 10:00 p.m. we hear the slamming and banging noise, I don't understand what we have to digest.

Mr. Berube replied that speaking from his position as the Director, we have had open discussions with OfficeMax and they have been very cooperative in trying to resolve this problem. They are doing things that the Board would have ordered them to do. As far as curtailing their operation that is a sticking point with them. I think that if we had issued an order for them to curtail their nighttime operations they would have appealed the order and we would have been involved in some kind of litigation, which would have dragged this process out for a significant amount of time. It is in the Board's best interest to allow OfficeMax the opportunity to work with us to resolve this problem. If they can't resolve this problem with the sound barrier it sounds like they are going to cease operations. We will have a resolution in a shorter period of time than if we were involved in litigation.

Mrs. O'Rourke explained as a Board we have to give them the chance to correct the situation. This has not been before the Board of Health for a long period of time. Not only do we owe it to the residents but we owe it to OfficeMax to give them the opportunity to correct this situation.

7:50 p.m. Lynnway Auto Auction – 400 Charter Way – Request Variance for work within the Flood Plain and 100 feet of the Flood Plain and Stormwater Management Approval

Mrs. O'Rourke stated the next item on the agenda is Lynnway Auto Auction, requesting a Variance for work within the flood plain and 100 feet of the flood plain and stormwater management approval.

A large copy of the plans for the Auto Auction was placed on the easel for the Board Members and the audience to view.

Attorney James Dangora, Shea, Dangora and Nelson identified himself. Attorney Dangora explained that he was representing the applicant, Lynnway Auto Auction. The applicant has purchased

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an industrial building on 400 Charter Way off Rangeway Road. It is an industrial building about 60,000 square feet and has been empty for a long time. The applicant is also purchasing a vacant parcel of land contiguous to the industrial building, which is about 30 acres of usable land. Presently they operate the Auto Auction in the city of Lynn. They are going to spend 9 to 10 million dollars in this community. They will employ approximately 300 people at the site. No repair work will be done at the site. They are going to out source all their repairs to Marshall's Auto Body. We have received approval from the Board of Appeal. We also went before the Board of Selectmen and received the Class 2 License. We have been before the Conservation Commission and received an Order of Conditions. This operation will create some job opportunities. The Board of Health is the last approval that is needed. The Conservation Commission has addressed all of the flood plain issues. Woodard & Curran has reviewed the plan for the Conservation Commission. Todd Lobo will address the drainage design. Attorney Dangora asked if anyone has any questions.

Todd Lobo, Beals Associates, Inc., representing Lynnway Auto Auction, identified himself. Mr. Lobo pointed to the existing building and explained the details of the drainage design. There are high points in the pond areas along the perimeter outside the fifty (50) foot buffer zone of the wetlands. There are treatment swales and constructed pocket wetlands. Mr. Lobo explained that the water is treated and will discharge into the resource area buffer zones. The water will be pretreated before it is infiltrated back into the ground. Some improvements will be made to the on-site sewage disposal system. The drainage design is simple.

Mrs. O'Rourke asked if someone could explain how the auto auction works.

James Lamb, Lynnway Auto Auction, identified himself. Mr. Lamb explained the process of how the auto auction works. The cars drive into the building and then they are sold.

Mrs. O'Rourke asked will you be washing cars on the site.

Mr. Lamb replied yes, but there will be no repairs or oil changes on the site. If there is a diagnostic noise we listen to it but we do not do any repairs.

Mrs. O'Rourke asked where do the cars come from.

Mr. Lamb replied various dealers throughout New England.

Mrs. O'Rourke asked can anyone go there.

Attorney Dangora explained no, you have to have a Class 2 License to enter the premises. There will be twenty-four hour security on the site.

Mr. Berube stated that he did not think you were going to wash cars on the site.

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Mr. Lamb explained that we may rent the Hyster building because that has a recycling area to wash the cars.

Mr. Berube stated the Board of Health will need to know if you plan on washing cars.

Mr. Kane asked is there a flood plain issue.

Mr. Lobo stated no. We are not doing any work in the Green Engineering Flood Plain (GEFP). The bridge will go over the top of the GEFP.

Mr. Kenyon stated that he has a concern regarding the recycled water since he is on the Water Conservation Committee. Water usage is something that the committee looks at.

Mr. Lamb replied that recycling is very important to us.

Mrs. Giroux asked how many cars will there be on the site.

Mr. Lamb replied approximately 1,000 to 1,100 cars.

Mrs. Giroux asked how long will it take to cycle the cars through.

Mr. Lamb replied the cars usually come in on Tuesday and are gone by Wednesday night.

Mrs. Giroux stated so then another 1,100 cars will come in. Will there be any disable vehicles on the site.

Mr. Lamb replied no, everything has to run.

Mrs. Giroux asked if there was going to be a snow removal storage plan.

Mr. Lamb explained that during the winter we do not have as many cars on the lot so we designated an area in the parking lot for the snow.

Mr. Lobo explained and pointed to the area on the plan that is designated for the snow that will be outside the buffer zone.

Mrs. Giroux asked if the traffic plan has been worked out.

Attorney Dangora explained we presented the Board of Appeal and the Board of Selectmen with a traffic study. The auction will be held twice a week; Wednesday from 9 a.m. to 1 p.m. and Thursday night from 6 p.m. to 9 p.m. The agreement that was made with the Board of Appeal is that there will be two (2) policemen on site every time there is an auction. There will be one on Rangeway Road and one at the gate. There will also be a fireman on the premises when there is an auction.

Mrs. Giroux asked will there be a cafeteria on site.

Mr. Lamb replied yes there will be a cafeteria however we may just bring in some kind of a caterer and coffee services.

Mr. Reader asked how close is the operation to Rangeway Road.

Mr. Lobo explained the location and pointed to the area on the plans.

Mr. Reader commented this is a perfect use for the property.

Mrs. O'Rourke asked how many employees do you anticipate hiring.

Mr. Lamb replied approximately 397 full time and part time employees.

Attorney Dangora explained the employees will be there all week, however the auction is only held two days a week and the rest of the week they will be preparing for the auction.

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

Mr. Berube stated that Brian Dunn from Woodard & Curran is the consultant for this project and is present to review his comments.

Brian Dunn, Senior Project Manager for Woodard & Curran, identified himself. Mr. Dunn explained that we did a comprehensive review for the Conservation Commission and the Board of Health. We looked at the Wetland Protection Act and the Board of Health Regulations as they relate to stormwater. The design of the Lynnway Auto Auction is in compliance with all the rules and regulations based on the amount of changes that have been made. I was asked by Richard Berube, Director of Public Health to review the septic design and have submitted an additional letter with some minor comments.

Mrs. O'Rourke asked if anyone in the audience has any interest this project.

Bob Stanton, 7 Whitegate Road identified himself. Mr. Stanton stated that he does not live near this project however he has some concerns that he feels may be important. Mr. Stanton explained that he lives across the street from Copart and over the years they have ramped up their operation. Copart has filled in the wetlands and store cars at the facility. They have brought in more construction vehicles to move the cars. I submitted a complaint to the Board of Health about the backup noise they make all day long. I don't know how these cars are going to be moved at the auto auction. If you sit down by Copart you will see all the eighteen wheelers that come down the street. They are so big that they take down power lines, they make a lot of noise and they go across the street into the neighbor's yards to turn the trucks around. They say their operating hours are from 8 a.m. to 5 a.m. There are trucks coming and going all night. I think the Town is setting themselves up for another high volume trucking company. I

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think this is going to be another noisy operation in this Town. If they buy cars from Copart how are they going to pick them up for transporting?

Mrs. O'Rourke asked is this operation going to interfere with where you live. Do you hear all this noise?

Mr. Stanton replied I hear the noise everyday. I live right across the street from Copart. Mr. Stanton stated that when it was Ronnie's it was very quiet and you could not tell that they were there. Copart's gates are open all the time. They said that they cannot adhere to closing by 7 p.m. because they have trucks coming in all the time.

Mrs. O'Rourke asked are you referring to Copart.

Mr. Stanton replied no, I am referring to this project. At one of the Board meetings the hours of operation were discussed and 7 p.m. was put on the Class 2 License. The Lynnway Auto Auction said they could not adhere to that because of the trucks coming in from everywhere and they needed to be able to drop stuff off.

Mrs. O'Rourke stated that she is going to give the Lynnway Auto Auction the opportunity to answer those questions.

Attorney Dangora stated that first of all you are talking about High Street, which is in a residential area. The agreement is that any vehicles that are coming in to Charter Way are coming off Route 3 and down Republic Road, which is an industrial area. The vehicles are coming off the highway on to Republic Road. This is an area that is isolated. It has been zoned for industrial use. There was a trucking company on this site in the past. There is a number of trucking companies in the area. This is the fourth Administrative Board that we have appeared before and there has not been any direct neighborhood opposition or problems. This gentleman lives in an entirely different part of the Town. These people are investing 9 to 10 million dollars in this site and they do not want to fight with their neighbors. It is a clean operation and is located in a perfect spot. If they don't adhere to coming down Republic Road through the industrial area and they get stopped, the police are going to report them to Lynnway Auto Auction and they will lose their right to come to the auction.

Mrs. O'Rourke stated that she assumed the cars will be coming in on a car carrier.

Mr. Lamb replied some of them will. Quite a few of the cars are driven in. We do not crush cars they are crushed at a salvage yard.

Mr. Stanton explained Ronnie's was more of a salvage yard. Copart is a different operation. Mr. Stanton stated that his concern is that Copart is going to go to the Auto Auction and get cars and vice versa.

Mrs. O'Rourke stated we are not talking about Copart.

Mr. Stanton stated I think another high volume car company is coming into this Town.

Mr. Berube stated that you are talking about two different clientele.

Mrs. O'Rourke stated this area is a perfect spot for this project.

Mr. Berube stated for the Board's information we did consider noise pollution because the auction is being held inside the building. I think they have adequately addressed that particular issue.

Mr. Dunn stated if you are going to make a motion to approve the Lynnway Auto Auction could the Board include a statement referring to the comments that Richard Berube and myself have made regarding the septic system be addressed prior to occupancy.

Mr. Kenyon made a motion to grant a variance of the Board of Health Rules and Regulations, Chapter 5, Sections 5.5.005 (1) and (2) in order to construct an auto auction facility in and within one hundred (100) feet of Flood Plain. Also the applicant seeks stormwater management approval pursuant to Board of Health Rules and Regulations, Chapter 6 based on the following findings of fact and pursuant to the following conditions:

FINDINGS OF FACT

- 1) The work described in the applicant's request is within an area subject to protection under the Billerica Health's Rules and Regulations, Chapter 5, Section 5.5.005 (1) (2) and Chapter 6 inclusive.
- 2) The Board of Health conducted a public hearing on September 13, 2010 and properly notified abutters in accordance with Billerica Health Regulations, Chapter 1, Section 1.2.007.
- 3) The applicant proposes to redevelop an existing office/warehouse building into an indoor auto auction facility. The scope of the work includes the renovation of the existing building and the creation of an outdoor vehicle storage area as well as parking for employees and visitors. Furthermore, there is a flood plain crossing to access one of the proposed vehicle storage areas.
- 4) The project was reviewed by Brian M. Dunn of Woodard & Curran, Inc., the Board of Health's Consulting Engineer, for potential impacts to the Flood Plain as well as compliance with applicable drainage regulations and the provisions of 310CMR15.000, the State Environmental Code, Title 5 and the Board of Health Rules and Regulations, Chapter 5.
- 5) The Board of Health will impose reasonable conditions to ensure the project is constructed in accordance with approved plans.
- 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.

CONDITIONS

Standard conditions number 1, 2, 3, 4, 5, 6, 8, 9, 10, 11, 12, 13, 14, 15, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 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 Beals Associates dated March 31, 2010 and revised to August 6, 2010 and stamped by Todd M. Lobo RPE#38094.
- B) The applicant must provide food service establishment plans for the proposed cafeteria to the Board of Health for review and approval.
- C) The proposed redevelopment to be serviced by an on-site sewage disposal system will require a plan review and approval by the Board of Health prior to the approval of any permits. The redevelopment of the existing septic system requires plan changes that were identified by this office as well as from our peer review consultant, Woodard & Curran. These changes to the plans must be updated and delivered to the Board of Health for final review and approval. Sewage Disposal System plans shall be designed in accordance with the provisions of 310CMR15.000, the State Environmental Code, Title 5 and the Board of Health Rules and Regulations Chapter 5. The plans must include a design of an exterior grease trap for the proposed cafeteria.

Mr. Reader seconded. So voted unanimously.

8:10 p.m. Daniel Williams – Springs Road – Request Variance to construct a Single Family Dwelling within 100 Feet of Flood Plain and a Septic System Designed for 3 Bedrooms

Mrs. O'Rourke stated the next item on the agenda is Daniel Williams, Springs Road, requesting a Variance to construct a single family dwelling within 100 feet of flood plain and a septic system designed for 3 bedrooms.

A large plan of the proposed house was shown to all the Board Members and interested parties.

Helen Lukash 605 Springs Road, Bedford provided the Board with a letter from the Stevens family along with a map of the flood plain and pictures of the stream.

Carlton Quinn, Allen & Majors Associates, Civil Engineer for the site, identified himself. Mr. Quinn explained that Tim Williams is the Project Manager and could not be present tonight. Attorney John McKenna is here representing Dan Williams. The site is located at 14 Springs Road. The site is on the Billerica Bedford line but the site itself is in Billerica and the street is in Bedford. There is an existing sewer line located in front of the site. Due to some complications between Bedford and

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Billerica; the agreement is that houses in Billerica will not be allowed to tie into the Bedford's sewer system. We submitted these plans to the Conservation Commission and they approved the wetland line and all the resources. The Conservation Commission wanted us to come before the Board of Health and receive approval before we go forward with them. The proposal is for a 3-bedroom two-story house with a driveway. The site is severely sloped towards the wetlands so a retaining wall will be required. The only area that will be disturbed will be within the fifty (50) foot buffer zone to the wetlands, which will require approval from the Conservation Commission. The relief that we are requesting is that the Board approves a septic system for a 3-bedroom house instead of a 4-bedroom house due to the existing site constraints of the property. The applicant has agreed to a deed restriction limiting the use of the dwelling to a 3- bedroom house. The second request is for relief of construction within 100 feet of the flood plain. Mr. Quinn pointed to the plans and explained where the flood plain is located. Mr. Quinn stated that the septic system will be 39.6 feet from the flood plain and the house will be 28.7 feet from the flood plain. It will be a small house on a big piece of property that has some wetlands.

Mrs. O'Rourke asked Mr. Quinn if he could explain why a retaining wall would be constructed and what type of retaining wall will it be?

Mr. Quinn explained that the retaining wall will be a segmental block wall. When the test pits were done we saw where the water level was and that a wall would be required so that the septic system would have four (4) feet of natural material underneath the system.

Attorney McKenna explained that the topography of the site slopes down to the wetland area.

Mrs. O'Rourke stated so there was only a small area where it would perc correctly to put in the septic system.

Attorney McKenna replied yes because of the buffer zone and the Conservation's limited areas and setbacks. Attorney McKenna explained that this lot has been before the Board of Appeal to seek relief from the side setback when it was proposed to be a neighborhood business. The fifteen (15) foot setback was denied. The owner has been to the Town of Bedford to seek approval to tie into Bedford's sewer system however it was denied. It is complicated by the fact that Bedford is part of the MWRA. There have been all kinds of alternatives for this site. During the ten (10) years that Mr. Williams has owned the land, the laws and setbacks have changed. There is a limited area that he can work with. The topography of the land is wetlands.

Mrs. O'Rourke asked is the address going to be Billerica or Bedford.

Attorney McKenna replied the house will have a Billerica address. There is a very small strip in the front of the property that is in Bedford and the majority of the land is in Billerica.

Mr. Quinn explained the size of this house is similar to the other houses on the street. All the other houses on the street are also on septic. The septic system will be built according to Title 5

standards. The only regulation that it will not meet is the local by-laws for the Green Engineering Flood Plain and the 4- bedroom design.

Mr. Berube explained that the lot is triangular and there is an intermittent stream that flows down the middle. Wetlands and flood plain is associated with that stream. The side slopes up where the house will be located. In reviewing the plans I questioned why a 4-bedroom system design could not be designed. We did additional test holes and found that the water table was high and there is also a great deal of ledge on the property, which limits the size of the system that can be installed. The reason that the wall is being constructed is because the system will be a raised system and a great deal of fill will be needed. They did not want to fill in the flood plains or the wetlands. That is the reason for the 3-bedroom design.

Mrs. O'Rourke asked is the proposed house going to have a garage.

Mr. Quinn stated that he did not think so.

Mrs. O'Rourke stated so there won't be a garage with a room up above.

Mr. Quinn replied there maybe a garage under the house.

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

Helen Lukash 605 Springs Road, Bedford identified herself. Ms. Lukash explained that she was representing the Stevens Family. The Stevens family gave her a letter along with a map of the flood plain and pictures of the stream to present to the Board.

Mr. Berube asked Ms. Lukash if she would like to summarize the letter.

Ms. Lukash replied that she did not write the letter.

Mrs. O'Rourke read the letter from Mr. Stevens to the Board Members and the audience.

Mr. Reader commented that if the pictures were taken in April when the water table was still high these pictures do not show much of a stream.

Mr. Berube asked Mr. Quinn if he wanted to respond.

Attorney McKenna stated that we understand Mr. Stevens's concern regarding the vernal pond that is on his property however when the flooding occurred this spring this property was not affected. Mr. Stevens stated in his letter that any alteration of this stream due to the construction of a house would have a serious impact on the wetlands/vernal pond located on Perma's property and his property.

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Attorney McKenna stated that we have addressed all those concerns through our engineers. The construction will not affect the neighbors.

Mrs. O'Rourke asked if Mr. Stevens was at the Conservation Commission meeting.

Ms. Lukash replied the Conservation meeting was postponed.

Attorney McKenna explained that Mr. Stevens always submits a letter like this to each Board and Commissions expressing his concerns.

Ms. Lukash pointed to the plans and explained about Mr. Stevens's concern regarding the water flowing towards his property. He is also concerned with the septic system leaching into the wetlands.

Mr. Berube explained that there will be no alterations to the stream.

Ms. Lukash asked where will the leaching from the septic system go.

Mr. Quinn stated that nothing will be disturbed. The question is will the leaching field leach into the septic system. There are regulations for the offset of a leaching field to the wetlands. Mr. Quinn explained a plastic membrane will be installed so that nothing will leach outside the wall of the system and the system will force the water to go down four (4) feet into the ground and then cleanse itself chemically and do what a septic system is supposed to do.

Mrs. O'Rourke asked Ms. Lukash why isn't Mr. Stevens present.

Ms. Lukash replied that she does not know. He does not like to speak in public.

Mr. Reader stated that if Mr. Stevens has a lot of concerns it would have been better for him to appear personally.

Barbara Hagan, 17 Springs Road, identified herself. Ms. Hagan explained that her concern is the water going to be disturbed with the new septic system and the house being built on a hillside.

Attorney McKenna explained that when the Millandy's owned that property they used to block off the property and flood that area for the kids to skate on.

Mr. Quinn stated at this time we do not have the Notice of Intent approval from Markus Pinney, the Director of Environmental Affairs. Mr. Pinney was adamant about keeping a fence so that the area can't be mowed or that nothing would be done to disturb the wetlands. Mr. Quinn pointed to the line that the Conservation Commission agreed to and explained about the area where there would be no disturbance within fifty (50) feet of the wetlands.

Mrs. O'Rourke stated so the water that flows now will continue to flow.

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Ms. Lukash stated that she is confused because every notice that we have received states that the Conservation Commission's hearings have been continued.

Mr. Quinn explained the steps involved in the permitting process. First you go before the Conservation Commission to approve the resources, which is approved for three (3) years. Then you go forward with the permitting. Then a Notice of Intent is filed, which we have done and it has been continued. We have not appeared before the Conservation Commission for the Notice of Intent yet.

Ms. Lukash asked what is the life expectancy of the plastic barrier.

Mr. Quinn explained that the plastic barrier is designed per Title 5 requirements, which is the State requirement for a septic system. I am not sure of the actual life expectancy of the plastic barrier however I will find out.

Ms. Lukash asked what would happen if the septic system had a problem or fails.

Attorney McKenna replied that if there is a problem or the septic system fails the owner would have to fix it. It would be the same if your system failed, you would be notified and you would have to fix it.

Ms. Lukash stated that the reason she raised that question is that if the system fails, effluent discharge would flow into the wetlands.

Mr. Quinn stated that the septic system is going to be built fifty (50) feet from the wetlands that is a requirement of the Wetlands Protection Act.

Mrs. O'Rourke stated that Mr. Berube would explain.

Mr. Berube explained that he has reviewed the plans and the proposed septic system complies with the Title 5 requirements. If the system fails there is a reserve area where they can replace the system. The wall will prevent the effluent from migrating out to the wetlands and the stream.

Ms. Lukash asked are they going to build a garage.

Mr. Berube stated they may build a garage under the house. If the owner of this property decides to build a detached garage at a later date they will have to go before the Zoning Board for approval.

Ms. Lukash asked what is the square footage of the proposed house.

Mr. Quinn stated that the house sits on 1,000 square feet and the footprint is 31 feet x 35 feet.

Ms. Lukash stated so the septic system is designed for a 3 bedroom house.

Mr. Quinn replied it will be stated on the deed that the house is designed for a 3 bedroom house..

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

The Board Members did not have any questions.

Mr. Kane made a motion to grant a variance of Board of Health Rules and Regulations, Chapter 5, Sections 5.5.005 (2) and 5.3.007 in order to construct a single family dwelling and septic system within one hundred (100) feet of Flood Plain. The septic system is designed for a flow of three hundred thirty (330) gallons per day based on the following findings of fact and pursuant to the following conditions:

FINDINGS OF FACT

- 1) The work described in the applicant's request is within an area subject to protection under the Billerica Health's Rules and Regulations, Chapter 5, Sections 5.5.005 (2) and 5.3.007.
- 2) The applicant proposes to construct a new single family dwelling and septic system within twenty-nine (29) feet and forty (40) feet respectively of the Green Engineering Flood Plain elevation 222.
- 3) The location of the proposed dwelling and septic system shall not encroach upon the Flood Plain as delineated on the Green Engineering Flood Plain Map #60.
- 4) Board of Health Rules and Regulations Chapter 5, Section 5.3.007 states that all surface sewage disposal systems for new construction of single family dwellings shall be designed to accept a minimum flow of four hundred and forty (440) gallons of effluent per day. If a four hundred and forty (440) gallons per day design cannot be achieved, then a system may be designed for a design flow of three hundred and thirty (330) gallons per day only if a deed restriction limiting use of the dwelling to three (3) bedrooms is provided.
- 5) The proposed sewage disposal system is designed to accept flows generated by a three (3) bedroom dwelling due to site limitations related to the size and physical conditions of the lot of land.
- 6) The applicant agrees to a deed restriction limiting the use of the dwelling to three (3) bedrooms. This restriction shall become null and void upon an approved connection to the municipal sewer system.
- 7) The Board of Health has determined that the actions proposed by the applicant are adequate measures to protect the public health and environment and complies with the intent of Board of Health Rules and Regulations. Further, approval of the applicant's request will not be detrimental to the public health and environment.

CONDITIONS

Standard conditions number 1, 2, 3, 4, 5, 6, 9, 10, 11, 14, 15 and 25 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 Allen & Major Associates, Inc. dated December 9, 2009 and revised to August 30, 2010 and stamped by Timothy J. Williams RPE#43119.
- B) This variance shall constitute a deed restriction limiting the use of the dwelling to three (3) bedrooms in accordance with Board of Health Rules and Regulations Chapter 5, Section 5.3.007 and extend to all future owners of the property.
- C) The applicant shall provide a copy of the deed to the property to the Board of Health containing the following language. "The dwelling shall be restricted to use as a three (3) bedroom house. Any change in use shall require written approval from the Board of Health. This deed restriction shall expire upon the completion of an approved connection to a municipal sewer system. The owner(s) and subsequent owner(s) shall disclose this restriction to any potential buyers of the property."

Mr. Reader seconded.

8:20 p.m. Alexandra Raworth – 71 Boston Road – Request a Waiver of Regulations for work within the Flood Plain

Mrs. O'Rourke stated the next item on the agenda is Alexandra Raworth, 71 Boston Road, requesting a Waiver of Regulations for work within the Flood Plain.

Alexandra Raworth, 71 Boston Road, identified herself. Ms. Raworth explained that she is requesting a Waiver of Regulations to install an above ground pool on her property. The property is in the Green Engineering Flood Plain. I have had discussions with the Conservation Commission because they have the same issue as the Board of Health. I have provided Mr. Berube with a copy of the FEMA flood plain map, which does not show our property in the flood plain. Ms. Raworth explained that she hired an independent wetland consultant to assess her property. He determined that the property is not in a wetland area. The Conservation Commission said they would sign off on the permit. I am requesting a Waiver of Regulations for work within the flood plain and that the Board of Health approve the installation of an above ground pool.

Mrs. O'Rourke asked where on Boston Road is the property located.

Ms. Raworth explained just beyond the North Billerica Post Office across the street from the Life Care Center.

Mr. Berube explained that he included a copy of the flood plain map in the Board's package. The Green Engineering Flood Plain (GEFP) elevation is 110. If you use the adjusted elevation per our regulations it brings the GEFP to 107, which is also the FEMA elevation. If you use that elevation it would take her property out of the flood plain. In the past the Board has granted approval of an above ground pool in the flood plain area. One of the conditions would be if the pool causes a problem it would have to be removed.

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 Waiver of Billerica Health Regulations, Chapter 5, Section 5.5.005 (1) (2) to allow the installation of an above ground pool in the flood plain located at 71 Boston Road based upon the following findings of fact and subject to the following conditions:

FINDINGS OF FACT

- 1) The work described in the applicant's request is within an area subject to protection under the Board of Health's Rules and Regulations, Chapter 5, Section 5.5.005(1)(2).
- 2) The applicant proposes to install an above ground pool in the rear of the property located at 71 Boston Road and further described as Assessor's Plate 8, Parcel 48. The rear of the property falls within the Green Engineering Flood Plain (GEFP) as delineated on Map #32. The property does not fall within the FEMA Flood Plain. If the GEFP elevation is adjusted pursuant to the Board of Health Rules and Regulations, Chapter 5, Section 5.5.005 (8), the property will fall outside the flood plain.
- 3) It was determined that the installation of the above ground pool would not create a significant loss of flood storage. The pool can be taken down if it creates a problem.
- 4) The Board of Health has determined that the actions proposed by the applicant are adequate measures to protect the public health and environment and complies with the intent of Board of Health Rules and Regulations. Further, approval of the applicant's request will not be detrimental to the public health and environment.

CONDITIONS

Standard conditions number 2, 5, 6, 10, 11, 14, 15 and 25 in accordance with the Board of Health regulations and Special Conditions:

- A) The above ground pool shall be located as shown on the plan submitted and approved by the Board of Health.

Mr. Kenyon seconded

8:25 p.m. Jennifer Croce – Petition Board of Health to Adopt Regulations regarding the Keeping of Hens

Mrs. O'Rourke stated the last item on the agenda is Jennifer Croce, petitioning the Board of Health to adopt regulations regarding the Keeping of Hens.

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Ms. Croce provided the Board with a package of supporting documentation for Warrant Articles 42 and 43 for Keeping of Hens.

Jennifer Croce, 26 Christina Avenue, Billerica identified herself. Ms. Croce explained that she was present to support the Fall Town Meeting Warrant Articles that she has submitted regarding the addition of regulations to the Board of Health for the keeping of backyard hens. Ms. Croce explained that in the past few years cities and towns have been adding chicken laws that allow 4-6 hens as backyard pets. Ms. Croce explained that these regulations will be for hens only and not roosters. The hens will be kept in a neat appearing and well-kept pen. Ms. Croce explained the benefits of owning backyard hens and how they can help the environment. They are small and inexpensive pets that responsible citizens can use to reduce carbon emissions. With comprehensive regulations backyard chickens are no more of a nuisance than other domestic pets. Allowing residents to raise hens for eggs helps to ensure that the food they consume is safe. There is no better time for Billerica to make hen owning legal. For this to happen I feel that approving regulations pertaining to their maintenance and care is vital in order for the Town to make owning hens legal. I will be happy to answer any questions that the Board may have and I urge you to vote on passing these proposed regulations. Ms. Croce thanked the Board Members for their time.

Mrs. O'Rourke replied that the Zoning By-Laws need to be changed. This Board cannot do anything.

Ms. Croce stated that she will be going before the Zoning Board. I was not sure which Board I should appear before first, the Board of Health or the Zoning Board.

Mrs. O'Rourke stated that the only thing this Board of Health can do is review the article. The Town's regulations do not state whether you can or cannot have chickens. The only thing the regulations state is that you cannot have roosters. When the Zoning By-laws are changed to stipulate you can have chickens then this Board will review it. Until that time, we cannot do anything. Mrs. O'Rourke clarified that she was not saying that after you receive approval from the Zoning By-Laws that this Board will give their approval. I am only saying that in order for you to get what you want the Zoning By-Laws have to be changed. I don't know what that requires. Mrs. O'Rourke asked Mr. Berube if he knows what the requirements are.

Mr. Berube explained that a warrant article has been submitted to Fall Town Meeting regarding the keeping of hens.

Ms. Croce stated that when she started to research about the keeping of chickens she found that there are zoning by-laws and regulations for the keeping of horses so she figured that she would need to go before both boards for approval. Ms. Croce explained that she is also meeting with the Planning Board and the Finance Committee.

Mr. Reader asked is there a regulation that states you can't have chickens.

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Mr. Berube explained that the regulations state that you cannot have livestock. It does not specifically state chickens. Generally, the interpretation by the Building Department is that livestock includes chicken.

Ms. Croce stated that when she came to the Town Hall, she was told that she could not have chickens.

Mrs. O'Rourke stated that she knows someone that lived on Nashua Road that had chickens and there are other residents that also have chickens.

Ms. Croce stated that she knows that there are some residents that have chickens but she was trying to go about it in the right way. I also talked to the Building Inspector and he informed me that he cites residents that have chickens.

Mrs. O'Rourke explained to Ms. Croce that after she receives approval that the Zoning By-Laws are changed then you would have to come back before the Board of Health for review. Mrs. O'Rourke explained to Ms. Croce that she will have to speak about this article at Town Meeting.

Mr. Berube stated that he wanted to clarify that if you succeed with the article it does not mean that it will be permissible by the Board of Health. The Board of Health could not approve the keeping of hens because of certain public health reasons.

Mrs. O'Rourke stated it also could not be approved because of the size of your property.

Ms. Croce explained that her property is large enough.

Mrs. O'Rourke asked where does it state that.

Ms. Croce replied in the articles that I have researched it explains the amount of square footage needed for the keeping of hens.

Mr. Berube stated that Mr. Kenyon submitted a packet to the Board regarding health risks associated with raising chickens. Mr. Berube asked Mr. Kenyon if he would like to comment on the article.

Mr. Kenyon replied that he went online and researched about raising chickens. It states that this is a fad. Mr. Kenyon talked about the permitting process and the salmonella issues. There are a lot of issues and procedures regarding the cleanliness and care of the chickens that need to be followed. It is going to be very hard to control the cleanliness to ensure that there would not be an outbreak.

Ms. Croce replied that is true for any pet that is owned. The key is cleanliness and that the regulations are enforced.

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

The Board did not have any questions.

Mrs. O'Rourke stated the Board would have to wait to see what happens at Town Meeting.

Mr. Berube asked Ms. Croce if she was withdrawing Article 42.

Ms. Croce replied yes.

Mrs. O'Rourke asked what is the article regarding.

Mr. Berube explained that Article 42 is the Board of Health adopting the regulations and Article 43 is zoning.

Mr. Reader gave Ms. Croce a copy of the health risks associated with raising chickens that Mr. Kenyon had researched online.

Mrs. O'Rourke asked if anyone was present for Open Session. Mrs. O'Rourke informed the Board that she received an e-mail from Joan Parcewski, Chairman of the Yankee Doodle Committee expressing a desire to come before the Board concerning portable toilets at the Yankee Doodle event. I met her before she was going before the Board of Selectmen's Meeting and explained that she could come before the Board at Open Session because the company that she wanted to hire was not licensed with the Board of Health. I further explained that the Board of Health had another problem earlier in the year and that company was cited so the Board could not make an exception for the Yankee Doodle Committee. She wanted a two (2) day permit. I also informed her that she could come before the Board at Open Session and address the issue however she told Secretary, Sandra Giroux that she would not come before the Board tonight. I wanted to make sure that the Board knew that she was asked if she would like to appear before the Board and she chose not to.

Mrs. Giroux stated that Ms. Parcewski did not understand the Board of Health rules and figured that she did not have to follow the rule because Yankee Doodle is a non-profit event and she thought an exception could be made. She was only looking for a cost savings measure for the event.

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

The Board adjourned at 10:05 p.m.

Respectfully submitted,

Sandra Giroux
Secretary

Joanne M. White
Recording Clerk