

BOARD OF HEALTH MINUTES
October 4, 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 September 13, 2010. Mrs. Giroux seconded. So voted unanimously.

BOARD OF HEALTH BUSINESS

Health Department Activity Report

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

Mr. Berube explained that the Health Department has received several noise complaints regarding Empire Recycling on Sterling Road. Health Agent, Phavy Pheng investigated the complaints and could not verify the problem. Empire Recycling and the Swanson Meadows Condo Association have met on several occasions and resolved some of the ongoing issues. I met with the owners of Empire Recycling and they would like to add on to the existing building so that they could enclose some of their operation, which would be beneficial in reducing the noise. There have been five (5) new cases of illegal dumping. We have also received a complaint regarding an abandoned property at 32 Forest Park Avenue. Phavy is still investigating that situation. There are three (3) new housing complaints and three (3) failing septic systems complaints. Two (2) orders have been issued for the failing septic systems and we are still investigating the third (3) failing system. I met with the owners of 32 Sheridan Street and they informed me that they are on a waiting list for sheltering. Currently, they are staying in

a hotel. The owner told me that he is waiting to hear back from the insurance company and the mortgage company. Mr. Berube stated that it sounds like they are getting the run around from both of them. I gave him the name of a person to contact from the State to see if he can get some help in resolving this problem. The existing house either needs to be repaired or torn down.

Mrs. O'Rourke asked what happens if the existing house can't be repaired.

Mr. Berube stated that he did not think the house could be repaired. I am going to ask Mark LaLumiere, the new building inspector to look at the house and get his opinion. As I stated before I gave the owner the name of a contact person that may be able to help. Mr. Berube stated that he would keep the Board informed.

Mr. Berube explained that recently there has been a bed bug problem in the news. It is a huge problem in New York. Included in the Board's package is a copy of a brochure regarding bed bugs. I would like to distribute the brochure to all the household residents in Billerica. We are in the process of obtaining estimates for copying these brochures. The Health Department is looking into organizing a seminar to inform the hotels, apartment and condominium complexes in this area about the bed bug problem. It is not easy to get rid of bed bugs and it is very costly.

Mrs. O'Rourke explained a situation of a resident who contacted her about getting rid of bed bugs. She had bed bugs in four (4) bedrooms. After talking to several people I found out that there is a company down the Cape that does exterminate for bed bugs. The cost is twenty-five hundred (2,500) dollars. They come in and heat your house. You have to move out. That is the only company that will do the job. It is a three (3) step process and is very expensive.

Mr. Berube explained that once the bed bugs get into your dwelling it is an expensive and time consuming process. It is a problem that you will be seeing in the news across the country. We are going to try to make everyone aware of the bed bug problem.

Mr. Berube explained that included in the Board's package is a copy of Angela Braun's health activity report. A complainant reported that she was served a piece of chocolate cake with mold on the frosting at G'Sepes at 279 Boston Road. When Angela investigated the issue the chef recalled the incident and apologized and said that it would never happen again. They will be monitoring and dating their desserts. There was a complaint of bed bugs at the Twelve Step Education Program at 317 Boston Road. Phavy Pheng and Angela Braun conducted an investigation and there was no evidence of bed bugs. However the facility had been recently treated. Angela conducted 48 food inspections, plus 2 snack stands at the football fields and 20 temporary food booths at Yankee Doodle Weekend. Angela indicated that we need to discuss with the Yankee Doodle Committee the way the food service operations are licensed. Angela is currently inspecting the school cafeterias. As you recall we discussed the Allergen Regulations at the last meeting. The affected food service establishments are cooperating with the new regulations and will be checked for compliance during routing inspections. The calorie posting regulations have been postponed. The Department of Public Health has estimated that March 2011 would be the soonest the regulations will be implemented. Angela and I had an enforcement

conference with Nick Fatsis of Java's Brewin. They have made significant progress and improvements. A food consultant is no longer required by the Health Department. Nick stated that he is going to continue to use the Food Service Solutions because he likes the constant feedback and the continuous education for his staff. Angela will continue with the routine inspections of Java's Brewin.

Christine West, Public Health Nurse continues with the Communicable Disease Reporting, walk in blood sugar testing and lead testing. Sharps Containers will soon be available for Town residents for a limited time only. The residents have been bringing in containers that are unacceptable and taking up too much space. The first flu clinic is scheduled for Tuesday, October 19, from 9 a.m. to noon at the Council on Aging for seniors ages 60 and up and ages 19 and up with a chronic health problem including asthma, diabetes and pregnancy. Christine is waiting for the arrival of more vaccine to hold a Town Clinic for all residents. At the current time there is only enough vaccine for one (1) clinic. Christine West along with Carole Butze will hold a flu clinic in each of the schools for grades 4 through 12 only. Notices will be sent out to all parents of school children later this week. The Department of Public Health is advocating school based clinics. Some children under age 9 need 2 doses and they will be encouraged to see their own pediatrician or contact the Board of Health when Dr. Guyetsky has a mini clinic at the Board of Health office. Tuesday, October 5, 2010 is the last day for AED/CPR training. Joseph Devlin, Paramedic, Billerica EMS has done a fantastic job in the training. There will be a makeup day in the future.

Mrs. O'Rourke stated that since this meeting is being recorded and will be on BATV Mrs. O'Rourke asked Mr. Berube if he could give an update on how we were able to purchase the AED units and where they will be located.

Mr. Berube explained that the Board of Health is part of the Upper Merrimack Valley Public Health Coalition. We participate in many training exercises and clinics to prepare for an outbreak such as anthrax or flu. We have been trained to set up clinics where we can inoculate as many residents as we can in a limited time. Recently we purchased five (5) Automated External Defibrillators (AED) in case someone has a heart attack. The new AED's will be located in the Town Hall, Billerica Public Library, the Hallenborg Ice Rink, the DPW Water Treatment Plant and the Board of Health office.

Mrs. O'Rourke asked will one of the units go to the Council on Aging.

Mr. Berube replied the Council on Aging and the Billerica Public Schools already have AED units.

A resident in the audience asked if the AED units were purchased through a grant through the State.

Mr. Berube replied we belong to the Upper Merrimack Valley Public Health Coalition and the units were purchased through grant money we received from the Federal Government.

Flu Clinic Schedule

Mr. Berube reiterated that the first flu clinic is scheduled for Tuesday, October 19 from 9 a.m. to noon at the Council on Aging for seniors ages 60 and up and ages 19 and up with a chronic health problem including asthma, diabetes and pregnancy.

Proposed 2011 Board of Health Meeting Calendar

Mrs. O'Rourke stated the next item is the proposed Board of Health Meeting Calendar for 2011. Mrs. O'Rourke asked the Board Members if they had any questions or comments on the calendar.

Mr. Berube suggested that the Board Members review the calendar and if there are any conflicts or adjustments that need to be made they can contact the Board of Health office. The Board can vote on accepting the calendar at the November 1, 2010 Board of Health meeting.

Vacation Schedule

Mrs. O'Rourke stated the next item on the agenda is Richard Berube's vacation schedule.

Mr. Berube explained that he would be on vacation from October 19 through October 25, 2010. Angela Braun will be in charge of the office and be able to perform minor administrative duties during that time. If any issues arise I can be reached on my cell phone at 978-821-7041.

MHOA Annual Educational Conference

Mrs. O'Rourke stated the next item is the MHOA Annual Educational Conference.

Mr. Berube explained that Health Agents, Angela Braun and myself will be attending the annual conference in Springfield, MA on October 27 and 28, 2010 and Phavy Pheng will be attending the conference on October 27 only. If there is an emergency I can be reached on my cell phone.

Mrs. O'Rourke suggested that a notice be posted stated that there will not be any Health Agent coverage in the office on those days.

McFarland Cascade Progress Report

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

Mr. Berube explained that GZA has provided the Health Department with notification in accordance with the Massachusetts Contingency Plan (MCP) that a Response Action Outcome (RAO) Statement has been filed with the Massachusetts Department of Environmental Protection (MassDEP) on September 29, 2010. A website was provided for the Board Members to review the report. The report is

475 pages. I spoke with DEP and they did receive the Response Action Outcome Statement. Once they have reviewed the report they will contact me and let me know their findings.

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

The Board Members did not have any questions.

Iron Horse Park

Mr. Berube stated that he had one additional item that he would like to inform the Board about. Mr. Berube explained that he received a Public Notice that all residents are invited to attend an Information Meeting for the Iron Horse Park Superfund Site. As you recall earlier this year the Environmental Protection Agency (EPA) stated that they would report back on the activities at Iron Horse Park. A Public Information meeting will be held on Wednesday, October 27, 2010 at 7 p.m. regarding EPA's proposed sediment cleanup and groundwater monitoring actions. Then there will be another meeting on Tuesday, November 9, 2010 at 7 p.m. for public comments and a brief information session. Both events will take place in the Billerica Town Hall Auditorium, 365 Boston Road, Billerica, MA.

Mr. Kenyon asked who is invited to attend this meeting.

Mr. Berube replied the meeting is open to the public, anybody can attend. Mr. Berube explained that they have capped the asbestos lagoons, which was one of the source areas that they were cleaning up.

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

The Board Members did not have any questions.

7:20 p.m. Breckenridge Estates – Pinedale Avenue – Requesting Definitive Subdivision Approval

Mrs. O'Rourke stated the first hearing is Breckenridge Estates, Pinedale Avenue, requesting Definitive Subdivision Approval.

Mr. Hanley presented a large plan of Breckenridge Estates for the Board Members and any interested parties to review.

James Hanley, Civil Design Consultants, on behalf of Seanco Realty Trust, identified himself. Mr. Hanley introduced Sean McCarthy, the applicant. Mr. Hanley explained the applicant has appeared before the Planning Board in June 2010 and been through the process and addressed all their concerns. We will be receiving a draft of their conditions in two (2) weeks. We have received a draft of their conditions and are close to finishing up with the Planning Board. We appeared before the Conservation Commission two (2) weeks ago and are still working with them to address their specific concerns.

I have also worked with BETA Group over the last four months to address a number of concerns so that we comply with the Planning Board, Conservation Commission and the Board of Health. Mr. Hanley explained that he would give a brief presentation on the proposal. Breckenridge Estates is a nine (9) lot residential subdivision located on the east side of Pinedale Ave. Mr. Hanley pointed to the plans and explained the location of Breckenridge Estates. To the north of the proposed development is a residential development, to the east is a large wetland regime as well as the New England Power Company and utility easement, to the west is Pinedale Ave. and some residences and beyond that is vacant wetland that belongs to the Town of Billerica. The lot is 8.5 acres. We are limited to 50 feet of frontage along the existing roadway. A significant portion of the site is degraded. About 1/3 of the site has no vegetation and is completely exposed. Mr. Hanley pointed to the site and explained about the slope down Pinedale Ave. and the three (3) separate wetland pockets on the site. Mr. Hanley also explained the soil conditions. Breckenridge Drive is 750 feet long and the pavement is 24 feet wide. The proposal is to support nine (9) single-family residential lots along its perimeter. The lots range in size from a minimum of 30,000 sq. feet to a maximum of 58,000 sq. feet based on their location on the site. The proposal is for a five (5) foot sidewalk on the south side of the road only. The maximum grade of the roadway is at 8%. All of the slopes are 3 to 1 or less. The proposal is to loop a water line through Pinehurst and tie into Pinedale Ave. that should provide some benefit of improved water quality and pressure. Mr. Hanley pointed and explained the area where the sewer would tie in to an existing dead-end on Pinehurst Ave. We are proposing 250 feet of a two (2) inch dry force main that would allow some of the residents that may have septic issues to tie into a gravity sewer system

Mrs. O'Rourke asked if the residents at 78 Pinedale Avenue would be allowed to tie into the sewer system.

Mr. Berube replied yes.

Mr. Hanley explained the proposal is for a two (2) inch force main that could accommodate 10 to 15 additional house lots to connect to town sewer.

Mrs. O'Rourke asked how wide is the road going to be.

Mr. Hanley replied 24 feet. We asked the Planning Board for relief of their regulations to shrink the road down to 24 feet because we will only be servicing nine (9) lots. The Planning Board requires that the road is 26 to 28 feet wide. One of the benefits of designing this project in the spring was that we had significant rains and I was able to see if there would be any problems. Mr. Hanley explained about the erosion and the existing trail that follows for 200-300 feet of the roadway. Some of the material erodes and the water carries it and brings it down Pinedale Ave. and eventually it gets into the closed drainage system and will discharge out into the existing wetland with an existing utility easement.

Mrs. O'Rourke asked is it standing water or a stream.

Mr. Hanley replied it is a stream. The water is moving toward the wetlands. First we want to stabilize the existing site by eliminating the existing erosion sediment. We also noticed some ponding.

Mr. Hanley pointed to the plans and explained that the first thing we are going to do is to address the ponding issue and provide an interceptor swale that discharges on both sides of the driveway. Mr. Hanley pointed to three (3) drainage areas. The first and the largest area is under the power lines. The second area is the closed drainage system along Pinedale Ave. The last is the existing Bordering Vegetated Wetland (BVW) area located in the west corner. Our proposed system is in two locations and drains off Pinedale Ave. There will be a series of catch basins and interceptor swales along both side of the roadway. By making these modification we will be able to reduce the peak discharge at each of the design points for up to and including the 100-year storm event.

Mrs. O'Rourke asked if there is a pump station in that area.

Mr. Hanley replied no. Mr. Hanley explained some of the additional improvements that were being provided at the request of the Planning Board and the Engineering Department. There are two (2) existing catch basins with a culvert that goes underneath Pinedale Ave. The Engineering Department asked us to look at the condition of those two (2) catch basins. We are proposing to remove those catch basins and replace them with manholes and two additional catch basins to take their place. Mr. Hanley pointed to an area on the plans and explained that there is an erosion problem however we have nothing to do with this. It is an existing problem along Pinedale Ave. The two (2) inch force main that we will be providing down to Pinedale Ave has nothing to do with what we need to do. But it will allow residents the potential to tie in down the road. Mr. Hanley asked if anyone had any questions.

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

Mr. Reader asked what percentage of the site is going to drain on to Pinedale Ave.

Mr. Hanley replied approximately 3/8's.

Mr. Reader asked if the drainage system on Pinedale Ave. would accommodate that.

Mr. Hanley replied yes after we make these improvements.

Mrs. Giroux asked if there is going to be nine (9) houses and the pump system can only support ten (10) houses how can other residents potentially tie in to town sewer.

Mr. Hanley explained that all of our houses will be serviced by gravity sewer. We are going to provide an additional two (2) inch force main down to this location so that we can provide 10 to 15 residents the opportunity to tie in to town sewer.

Mrs. Giroux explained that she lives on a very narrow road, is twenty-four (24) feet going to be wide enough.

Mr. Hanley replied it has been approved by BETA and twenty-four (24) feet is standard for nine (9) lots. Some of the documentation said that we could go down to eighteen (18) feet but we did not want to make the street that narrow.

Mrs. O'Rourke asked will a Fire Engine be able to turn around in the cul-de-sac.

Mr. Hanley replied yes. We have received approval from the Fire Department.

Mrs. O'Rourke asked is this project close to the Villages at Pinehurst development.

Mr. Hanley replied yes and pointed to that development.

Mrs. O'Rourke asked are you tying Breckenridge Estates into the sewer line from the other development.

Mr. Hanley explained yes. We will be going through a proposed easement into the right of way.

Mr. Reader stated so there is an existing easement on Pinehurst Ave.

Mr. Hanley replied that is correct.

Mr. Kenyon stated there is going to be more clearing than what the Town By-law allows. During the building process when the area is open and there is no trees is there any danger of a mud slide occurring because there won't be any vegetation there.

Mr. Hanley replied when the site is open the chances are greater of having issues so that is why we are going to prepare an erosion sediment control plan that will address that. Mr. Hanley explained the applicant is aware of this and that is why the development will be built in steps. I have been working with BETA Group to develop a tight erosion control plan. We are also going to have to comply with the NPDES Permit and provide a Stormwater Pollution Prevention Plan. We are aware and are working to address those issues.

Mr. Kane asked how deep is the retention basin.

Mr. Hanley replied the elevation at the top is 136.2 and the elevation at the bottom is 131 just a little over five (5) feet.

Mrs. Giroux asked is there a barrier between the two (2) projects.

Mr. Hanley replied we do not have a fence. We have created a visual barrier through landscaping. The Planning Board has asked us to provide more than two trees per lot. We have a combination of seventy-three (73) trees and shrubs that will be planted throughout the site. Mr. Hanley pointed to the plans and explained where the visual barrier is for the existing residents.

Mrs. Giroux asked is this project higher than the Villages at Pinehurst. If there was a mudslide this project would go down into the Villages at Pinehurst.

Mr. Hanley replied yes we are higher than they are. Once we get the ground planted that will stabilize it.

Mrs. Giroux stated that is what they said about the project on Rangeway Road and we know what happened with that project. That is why I am concerned about the runoff from this project to the other project.

Mr. Hanley replied we have been careful to maintain the existing drainage path. There is an existing berm at the property line.

Mrs. O'Rourke asked if any abutters were present that would like to ask any questions.

No abutters were present.

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

Mr. Berube stated that Phil Paradis from BETA Group has reviewed this project for the Board of Health, the Planning Board and the Conservation Commission and is present to comment on this project and offer his recommendations.

Phil Paradis, BETA Group, identified himself. Mr. Paradis explained that he has reviewed this plan a number of times for the Planning Board and the Conservation Commission. This project also required a Notice of Intent and compliance with the Wetland Protection Act and the Stormwater Management Standards. There are a couple of items that are still outstanding. We need the final agreement for the Operation and Maintenance Plan, the Stormwater Easement Plan and a final Stormwater Pollution Prevention Plan prior to construction. A number of people have addressed the key issues. One is the clearing of the site and another is the soil types. There will be a lot of movement of earth. A lot of time has been spent on the erosion plan. Mr. Paradis explained the erosion plan. The plan does meet the Stormwater Management Standards and the Town of Billerica's By-law. Because of the erosion I have added three comments. The latest letter to the Conservation Commission is attached for the Board to review. We are requesting that the applicant limit the amount clearing of open excavation at any given time. We also ask the applicant to vegetate the site as quickly as possible after the grading is done even before the house lots are built to prevent erosion.

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

The Board Members did not have any question.

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

Mr. Berube explained that this project has been thoroughly reviewed and I do not see any issues at this point. I would advise the Board to include the recommendations that Phil Paradis has suggested and include them as special conditions in addition to the standard conditions.

Mrs. O'Rourke asked is there any way the Health Department can make sure that 78 Pinedale Avenue ties in to town sewer. They have had a lot of problems and this would help their situation.

Mr. Berube explained that this would provide them the opportunity to take care of that problem. I would guide them in this direction.

Mr. Reader asked is 78 Pinedale Avenue next to this road.

Mr. Berube replied that 78 Pinedale Avenue would have to bring the sewer line up the street to the easement.

Mr. Kane made a motion to grant Definitive Subdivision Approval for Breckenridge Estates in addition the final agreement for the Operation and Maintenance Plan, the Stormwater Easement Plan and a final Stormwater Pollution Prevention Plan be submitted to the Conservation Commission as well as to the Board of Health prior to construction and subject to the following conditions:

1. All construction must be accordance with plans submitted for review and approval, prepared by Civil Design Consultants, Inc., dated April 9, 2010 and revised to September 13, 2010 and stamped by James E. Hanley, RPE #47708.
2. This variance shall not take effect until it is properly recorded at the Registry of Deeds and certified copy of this variance is returned to the Board of Health office indicating that a marginal reference was made on the original deed.
3. Any changes in the plan submitted and approved shall require immediate notification to the Board of Health by the Design Engineer and applicant. Further review and approval may be required at that time.
4. An as built plan shall be submitted to the Board of Health before the approval of any occupancy permit, or other documentation to satisfy the intent of the Board of Health's approval of any project.
5. There shall be no encroachment into the Flood Plain as delineated and approved on the plan submitted. This restriction shall be deemed a deed restriction and extend to all future owners of the property.
6. There shall be no stump dumps or dumping of any solid waste or liquid waste on site. Such activity shall constitute a violation of Massachusetts General Laws Chapter 111, Section 150A.

7. These conditions, imposed by the Board of Health, cannot be changed without the written approval by the Board of Health and only after a proper public hearing is held.
8. All drainage and stormwater management structures shall be installed and functioning in accordance with design standards prior to the approval of an occupancy permit. A status letter may be submitted as proof of compliance with this condition, to satisfy the intent of the Board of Health.
9. Upon completion of the work described herein, the applicant shall forthwith request in writing that a Certificate of Compliance be issued stating that the work has been satisfactorily completed.
10. This order does not relieve the permittee or any other person of the necessity of complying with all other applicable federal, state or local statutes, ordinances, by-laws or regulations.
11. The work authorized by these conditions shall be completed within two years from the date of this order, unless the time for completion has been extended to a specific date more than two years from the date of issuance and both that date and the special circumstances warranting the extended time period are set forth in this order.
12. This order may be extended by the issuing authority upon application to the issuing authority at least 30 days prior to the expiration date of this order.
13. Any fill used in connection with this project shall be clean fill, containing no trash, refuse, rubbish or debris, including but not limited to lumber, bricks, plaster, wire, lath, paper, cardboard, pipe, tires, ashes, refrigerators, motor vehicles or parts of any of the foregoing.
14. This order does not grant any property rights or any exclusive privileges; it does not authorize any injury to private property or invasion of private rights.
15. Failure to comply with all conditions stated herein, and with all related statutes and other regulatory measures, shall be deemed cause to revoke or modify this order.
16. A cash bond shall be submitted to the Board of Health in an amount required by the following formula. Bonds required for projects shall be equal to ten (10) percent of the EQUITY OF THE PROJECT. Equity of the Project shall be determined as follows:
Sales of homes/buildings/building lease – Cost of Construction x 10% =
Bond amount required
All bonds are subject to the following conditions:
 - 1) All bonds shall be cash bonds deposited in a bank selected by the Board of Health with release signed by applicant.
 - 2) Any additional requirements as deemed necessary by the Board of Health may be a condition placed on the bond.

- 3) Bonds shall be kept for a minimum period of one (1) year after the date of the issuance of a certificate of compliance or occupancy permit for the final home, unit or building sold, or leased or other time frames as determined by the Board of Health.
 - 4) The maximum amount of any bond shall be two hundred fifty thousand (250,000) dollars.
 - 5) Said bond shall be posted and used by the Board of Health to correct any violations of its rules and regulations or a public health nuisance as determined by the Board of Health, if an applicant refuses to correct a violation or public health nuisance after notice has been provided.
 - 6) Said bond must be posted prior to approval of permits. Said bond may be posted in installments with the approval of the Director of Public Health. In particular, an initial deposit shall be submitted to the Board of Health prior to the approval of any permits. Additional deposits shall be submitted to the Board of Health as each unit is sold. The final bond amount shall be held for a period of one (1) year after the final occupancy permit is issued.
17. The applicant and his construction supervisor/contractor and project engineer shall request and attend a preconstruction meeting with the Director of Public Health, the Board of Health's Consulting Engineer and any other interested parties prior to beginning any construction in order to review the construction sequence for the project, establish an inspection schedule and address any other concerns. The meeting request and written Notice of Construction Commencement shall be submitted to the Board of Health at least fourteen (14) days prior to beginning construction.
 18. The Board of Health Consulting Engineer/Consultant shall conduct inspections to ensure compliance with approved plans and conditions. All inspections shall be conducted in accordance with an inspection schedule approved by the Director of Public Health.
 19. The applicant, or his agent, shall notify the Board at least forty-eight (48) hours in advance of scheduled inspections, or completion of construction operations requiring inspection, and prior to starting work on the succeeding construction operation.
 20. Proof that a NPDES (National Pollutant Discharge Elimination System) Notice of Intent has been filed with the EPA (Environmental Protection Agency) shall be provided to the Board of Health prior to the approval of any permits. The applicant must provide a copy of the Stormwater Pollution Prevention Plan (SWPPP) to the Board of Health.
 21. A proper Operation and Maintenance Plan for the stormwater drainage system must be approved by the Board of Health and the Board's Consulting Engineer/Consultant prior to the approval of any occupancy permits.

22. The stormwater drainage and infiltration systems shall not be back filled until an inspection has been conducted by Board of Health's Consulting Engineer/Consultant or a representative of the Board of Health and permission has been granted to backfill.
23. A preliminary as-built plan for the stormwater drainage and infiltration system shall be submitted to the Board of Health and the Board's Consulting Engineer/Consultant for review and approval prior to the laying of any pavement.
24. Erosion and sediment control measures shall be implemented and maintained in all areas disturbed by construction activity including but not limited to construction and waste material storage areas. Erosion and sediment control structures shall be installed prior to beginning construction.
25. Agents of the Board of Health or its designee's, such as the Board of Health Consulting Engineer, or others so designated, shall have access to property covered by these conditions to make inquiries, conduct inspections, or take actions deemed necessary to protect the public health and the environment.
26. The applicant must provide final approved plans for any project covered by the conditions. Final plans are considered plans approved by all town departments.
27. Any approval, variance or waiver granted by the Board will not become effective until all outstanding invoices from the Consulting Engineer/Consultant have been paid by the applicant.
28. A COC will not be issued until all outstanding invoices from the Board of Health Consulting Engineer/Consultant for inspections or other services rendered during construction have been paid by the applicant.
29. 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.
30. The applicant shall provide a Maintenance Agreement for approval by the Board of Health and the Board of Health's Consulting Engineer prior to the approval of any occupancy permits. The Maintenance Agreement shall include signatures of owners and responsible parties, and an easement plan suitable for recording with the Registry of Deeds.
31. The applicant shall minimize the area of the land disturbance to the maximum extent practicable by exposing the minimum area required for construction activities.
32. Earthwork operations shall be continuous until completed and the site stabilized. Temporary sections of disturbed soils shall be stabilized to prevent erosion if exposed for more than 14 days.

33. The permanent restoration of vegetative cover, such as seeding or sodding, on all areas shall be accomplished within ten (10) days after final grading operations have been completed. Time extensions beyond the ten (10) days requirement may be requested in writing prior to completing final grading, and are subject to written approval by the Board of Health.

Mr. Reader seconded. So voted unanimously.

7:30 p.m. Middlesex School – 20 Riveredge Road – Petition the Board of Health for a Variance from the State Plumbing Code

Mrs. O'Rourke stated the next item on the agenda is Middlesex School, 20 Riveredge Road, requesting a petition from the Board of Health for a Variance from the State Plumbing Code.

Mr. Martins showed the drawings of the 1st and 2nd floor of the boat house for the Board Members and interested parties to review.

Harry Martins, Project Manager for Commodore Builders, identified himself. Mr. Martins explained that Commodore Builders is constructing a new boathouse at 20 Riveredge Road that will be used seasonally by the Middlesex School Crew Team. The local plumbing inspector informed me that per code, a drinking fountain is required on each floor of this new facility. I am requesting approval from the Board to waive that requirement. We need to appear before the State Plumbing Board to petition to waive that requirement. First the facility is a seasonal use facility which will be occupied only in the Spring and the Fall. Each drinking fountain will require additional maintenance cost and will need to be treated each year. Mr. Martins pointed to where the drinking fountains would be located on the drawing. The second concern is that the drinking fountains will not be utilized. The school promotes water bottles. The Middlesex School will be providing bottled water and energy drinks stored in refrigerator on the 2nd floor. There will be one Poland Springs water cooler in the boys and girls changing rooms. There will also be a Poland Springs water cooler in the 1st floor shell storage area. In addition, tap water will be available to fill crew team member water bottles from the 2nd floor sink faucet. The third concern is that the bottled water and energy water is more sanitary. The Director of Health services at the school promotes the use of bottled water. The students will be bringing the bottles of water with them on the boats. The three reasons for requesting the waiver of this requirement is the extended maintenance that would be required and the vandalism that could occur at the one outside and it is more sanitary to use bottled water as opposed to the drinking fountains. I am requesting that the Board of Health waive the requirement of the drinking fountains at the Middlesex School boat house at 20 Riveredge Road. Mr. Martins asked if the Board Members had any questions.

Mrs. O'Rourke stated that this Board has never come across a request like this.

Mr. Berube explained that Mr. Martins is looking for a waiver of the variance from the State Plumbing Code. It is not a Board of Health regulation or any other kind of health regulation. Part of the process for petitioning the Plumbing Board is to come before the Board of Health and seek approval or denial of this request from the Board before they can proceed to the Plumbing Board. The Plumbing

Board will take into account the Board of Health's input. The only comparison that I can make is that a Health Club needs to have some kind of water source so that anybody that is working out has something to hydrate themselves with. They are providing other sources of water so it should not be a problem.

Mrs. O'Rourke asked what are you requesting from this Board.

Mr. Berube replied the applicant is seeking approval or denial from the Board of Health to waive the drinking fountains at the Middlesex School boat house located at 20 Riveredge Road.

Mr. Martins asked the Board if there was a reason why the applicant could not omit the drinking fountains.

Mr. Berube replied there is no reason why the drinking fountains could not be eliminated.

Mrs. Giroux stated that she is in favor of omitting drinking fountains because they are not sanitary.

Mrs. Giroux made a motion to grant a variance from the State Plumbing Code for the purpose of omitting drinking fountains at the Middlesex School Boathouse. The school will provide other water sources and Poland Spring coolers for adequate measures to protect and promote public health.

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

7:40 p.m. OfficeMax – 9 Progress Road – Continued Hearing for Noise Nuisance

Mrs. O'Rourke stated the last item on the agenda is OfficeMax, 9 Progress Road, Continued hearing for Noise Nuisance.

Kevin Crowley, OfficeMax Operations Director, 9 Progress Road, identified himself. Mr. Crowley explained that he was present to explain the final decision made by OfficeMax. OfficeMax had URS conduct a sound study and provided a copy to the Board at the September 13, 2010 Board of Health meeting. The results of our sound study were similar to the study that was done by Mr. Berka's engineer. After we received this information we contracted a specialist that builds these types of sound barriers and it was determined that they would not guarantee a barrier of that size would put us in compliance with the Town of Billerica and the State's Noise By-law. Therefore we are going to relocate our bulk operations away from 9 Progress Road. What I am asking is if the Board would give us consideration during the time it takes us to move. We have already started to search for another facility. We have found a couple but we have not yet signed a lease. There are a lot of things associated with the move that have to be taken into consideration. We started our search after the September 13, 2010 meeting. During the period of transition from 9 Progress Road to our new location we are asking for the Board's approval to continue to operate and move at the same time without disrupting our business and service to our customers. We are asking that the Board grant OfficeMax that no enforcement action would take place during the transition period of one hundred twenty (120) days. We will try to move sooner. Mr. Crowley explained all of the work that would have to be done after OfficeMax signs a lease.

We will continue to do everything that we have been doing to minimize the noise until we move. We are asking the Board to grant us the one hundred twenty (120) days maximum in order to relocate our operation to another facility.

Mrs. O'Rourke asked are you just moving the distribution center or is the whole building going to be vacant.

Mr. Crowley replied we are moving the shipping operations, which is the portion of the operation that seems to be causing the most noise because it happens after hours. Once the move is complete there will be no trucking activity between the hours of 10 p.m. and 7 a.m. We do not want to create a disturbance. We do not want to operate outside of those guidelines.

Mrs. O'Rourke asked are you looking to stay in Billerica.

Mr. Crowley replied yes, we are looking at some facilities in Billerica as well as outside of Billerica.

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

Mr. Kane stated that he was disappointed that this had to happen but we need to find a balance for the residents. I am concerned with the move taking one hundred twenty (120) days. I understand it takes time for a corporation to move. Turning down the truck backup alarms and trying to enforce the trucks not to idle at night has not accomplished anything. Four (4) more months of violating the law is concerning to me. The law is clear and we have lots of documentation that you have been violating it since March 2010.

Mr. Crowley stated that he is not disputing that. However it takes time. We have done a lot of things. We have spent a couple of thousand dollars changing the back up alarms on the trucks to a lower decibel. We have changed part of our operation by loading the trucks by hand at night and not operating the compactor. There are some spikes. Out of the two (2) days that the study was done there was only six (6) spikes. There are only a few spikes that occurred over the limit during the study. The bottom line is that we are breaking the law and we are doing everything we can to get out of there. There are a lot of things that need to be done. We have phone lines and computer lines that need to be setup. If we could speed that process up we will. We will do everything we can to move as quickly as possible. The company wanted me to ask for one hundred fifty (150) days and I said no, I would not ask for that amount of time. It could happen sooner but it will not go beyond the one hundred twenty (120) days. I am the person in charge and I will make sure it happens as soon as possible.

Mr. Reader stated that he does not think the one hundred twenty (120) day request is unreasonable as long as in good faith you attempt to accommodate the residents with reducing the noise as much as possible in that time frame.

Mr. Crowley replied we will continue to do all the things we have been doing. Everyone in my facility is aware of the situation. Their awareness has been heightened. They know what to do if a truck comes into the facility at night and how to respond. It has been posted. I have supervisors that are aware and are making sure that no trucks are idling in the parking lot at night. I have not heard of any trucks idling in our parking lot for weeks.

Mrs. Giroux stated that you are operating outside of the law. I also understand that the neighbors have been dealing with a lot since the operation has changed. I would like to see if you can stay in Billerica. I also know that moving a business and putting all the technology in place takes time. My company uses OfficeMax as a vendor and we have noticed that our deliveries have been two (2) to three (3) hours later than they used to be. I hope the neighbors can give you a little more time.

Mr. Crowley replied that we need to find a location that does not abut any residential homes. We have been in Billerica for twenty-five (25) years. We are in the worst location in the park. There is no other place in the park that abuts neighbors like our facility.

Mrs. Giroux asked can you move back to the other location.

Mr. Crowley replied we are looking into that location but we removed everything when we left. All of the t-1 lines and the radio frequency antennas have been removed. No matter where we go we are going to have new lines connected.

Mrs. Giroux stated that she did not think the neighbors had a complaint when you were located in the other building.

Mr. Crowley replied we do not know for sure that there are any neighbors in that area.

Mrs. Giroux stated that we have not heard of any complaints from that location. Mrs. Giroux asked so if the building at 16 Progress Road is still vacant could that speed up the process of getting the technologies connected quicker.

Mr. Crowley explained that we have looked at several facilities and if we make our decisions tomorrow there is still an approval process that we have to go through because you are talking about hundreds and thousands of dollars of capital. When you sign a lease there is a lot of supporting documentation that needs to be provided. One hundred twenty (120) days would be in our best interest and the neighbors to make it happen as quickly as possible.

Mrs. Giroux asked wouldn't the imposition of fines speed that process up.

Mr. Crowley replied this move is our top priority we are not dragging our feet.

Mr. Kenyon stated that he agrees with Mr. Reader and one hundred twenty (120) days is a reasonable amount of time for what you need to do.

Mrs. O'Rourke stated that she also agrees and does not think one hundred twenty (120) days is a long time. I am sorry that the neighbors have this problem and that OfficeMax has to go through this. I think that OfficeMax has worked very diligently to try to correct the situation. Billerica is a place where you would want to bring your business to. This is the second time that another company is relocating. I don't want anyone that is watching this recording to think that this Board is anti-business in Billerica because that is not the case. I don't think one hundred twenty (120) days is too much to ask. I think that OfficeMax has been a good neighbor. I hope the residents get the relief that they are looking for and that life can go on.

Mr. Crowley stated that he did not think that anyone is being unreasonable. The law is black and white and we did not know that we were breaking the law.

Mrs. O'Rourke suggested that OfficeMax get in touch with Principal Assessor, Richard Scanlon, or John Curran, the Town Manager for a list of available buildings in Billerica.

Mr. Crowley explained that we need a building with a minimum of nine (9) dock doors. Most buildings that have nine dock doors would have 100,000 sq. ft. We need a shallow building. The building at 16 Progress Road is not deep but it is long and that is what we need. That is making that piece of property more attractive.

Mrs. O'Rourke asked if OfficeMax uses dock levelers that when you press the button it goes down gently and does not bang.

Mr. Crowley replied we have dock levelers but we do not have the new hydraulic type. We have the mechanical type of levelers that bang when they go down. The other building does not have dock levelers at all. We have about twelve (12) of them. We looked at replacing them with the hydraulic type and the cost would be about approximately \$3,500 – \$5,000 each. We were told that with the new hydraulic leveler the noise would be eliminated when the leveler was going down or when you lift the leveler. However the noise that we are making and is the most offensive is when we go in and out of the trucks and cross over the dock plate. That banging noise is very disruptive. If we load twenty pallets on a truck that means there are two (2) bangs per pallet, which equals forty (40) bangs one in and one out of the cross plate. We have researched the dock levelers and realized that was not going to solve our problem. Also, according to the sound study that was done only one truck can be running at a time. The only guarantee that we could be given with the sound barrier was if one truck was idling at a time. We did not want to have to relocate but there is no guarantee that if we installed the \$300,000 sound barrier that we would be complying with the law. So would you want to take that chance? We tried to explore every option there was. The sound barrier would make a big difference but there was no guarantee that we would be complying with the law. So the only option we have is to relocate the operation.

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

Mr. Berube explained that since OfficeMax is voluntarily agreeing to relocate the trucking operation. I recommend that the Board accepts the resolution by OfficeMax.

Mr. Berka stated that he would like to respond to this proposal. Mr. Berka thanked the Board for addressing this problem. I appreciate the time and attention the Board has given to this problem. I believe that the proposal by OfficeMax is a significant plan to rectify the problem. I was concerned about the four (4) month time period. I was concerned that OfficeMax would not take into consideration their continuing efforts to mitigate the noise while this transition takes place. I would urge the Board not to relinquish any aspect of its authority. This is the time when your full authority will help ushering in its resolution. I think the Board has the opportunity to use your authority and use it at your discretion. I urge the Board under no circumstances to give up your authority. I also want to thank OfficeMax for making this proposal. I also want to thank Mr. Crowley for his efforts. I hope the Board will retain its authority and usher in this plan to resolve this matter and do it expeditiously. Mr. Berka thanked the Board for their time and commitment.

Attorney Jeffrey Roelofs, representing Mr. Berka identified himself. Attorney Roelofs stated that in order for the Board to maintain their authority we would suggest that the Board keep the enforcement hearing open and request that a progress report be given once a month. As long as a progress report is submitted to the Board of Health someone from OfficeMax does not have to be present at the meeting. By keeping the hearing on the agenda until these conditions are abated it would provide a vehicle for OfficeMax to keep the Board informed and also would allow the neighbors to present their observations or information in the event there are problems during this transition period. The Board has an obligation under the State Law to make sure the abatement is accomplished.

Mrs. O'Rourke stated that she did not think OfficeMax would go through all this trouble if they did not intend to follow through with this move. I am sure that Mr. Berube will continue to follow this situation.

Attorney Roeloff stated that he is not suggesting that OfficeMax is not going to do it, I only am suggesting this so that there is a vehicle open for the exchange of information.

Mrs. O'Rourke stated if you would like any information you can contact the Board of Health office. Mrs. O'Rourke asked that a motion be made.

Mrs. Giroux made a motion to grant a waiver of the fines until January 31, 2011 and continue the hearing until OfficeMax completes their relocation efforts of the shipping operation. In addition, a progress report shall be provided to Richard Berube, Director of Public Health every month and will be discussed at the Board of Health meeting until the relocation has been completed. It will not be necessary for anyone from OfficeMax to appear in person.

Mr. Kenyon seconded. So voted unanimously.

Mrs. O'Rourke asked if anyone in the audience would like to discuss any issues or concerns pertaining to the Board of Health.

No one in the audience had any questions.

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

The Board adjourned at 8:30 p.m.

Respectfully submitted,

Sandra Giroux
Secretary

Joanne M. White
Recording Clerk