

**BOARD OF HEALTH MINUTES
JANUARY 12, 2009**

Marie O'Rourke, Chair called the meeting to order at 7:30 p.m. Also in attendance were Sandra Giroux, Secretary, Fred Kenyon, Daniel Kane, Richard Berube, Director, and Joanne White, Recording Clerk. Robert Reader, Vice Chair was absent.

ACCEPTANCE OF MINUTES

Mr. Kenyon made a motion to accept the Meeting Minutes of December 8, 2008. Mr. Kane seconded. So voted unanimously.

CORRESPONDENCE

Billerica Energy Center (BEC)

Mrs. O'Rourke stated the first item under correspondence is the Billerica Energy Center (BEC).

Mr. Berube stated that included in the Board's package are three pieces of correspondence regarding the Billerica Energy Center. The letter from Woodard & Curran is a peer review to the Conservation Commission. Mr. Berube explained that there are still some outstanding issues regarding the compliance with the Wetlands Protection By-Law and the Stormwater Management Policy. Mr. Berube stated that he wanted the Board Members to have a copy of the letter from Woodard & Curran since there is some overlap with regards to stormwater management.

Mrs. O'Rourke asked Mr. Berube if he heard they were going to close or they have already closed the monitoring station in Lowell and are going to move it to Worcester. Mrs. O'Rourke explained that if the proposed BEC that is going to be located in North Billerica had a problem they would contact the Lowell office.

Mr. Berube replied he has not heard anything about the Lowell monitoring station closing.

Mr. Kenyon commented that in the Air Permit memo from AERO Engineering Services it states that the Department of Environmental Protection (DEP) is violating their own standards.

Mr. Berube stated that the correspondence from AERO Engineering Services is very critical of the Department of Environmental Protection's (DEP) review of the air quality standards. The memo from Massachusetts Department of Public Health is in response to a request from a resident for health information. Both letters seem to be critical of the air emissions. Both letters point out concerns regarding fine particulate matter. That issue needs to be addressed in order to protect public health.

Mrs. O'Rourke asked when do you think the Billerica Energy Center project will come before the Board.

Mr. Berube replied he thinks the applicant is waiting for the State to issue their final decision from the Siting Board before they proceed any further with the Town Boards and Commissions.

Mrs. O'Rourke stated she thought they had already received approval.

Mr. Berube replied they only received a preliminary decision.

BOARD OF HEALTH BUSINESS

FY2010 Budget

Mrs. O'Rourke stated the first item under Board of Health Business is the FY2010 Budget.

Mr. Berube stated that he met with the Town Manager, Bill Williams and the Town Accountant, Paul Watson and the Board of Health budget was approved. This is the budget that was presented to the Board at the December 8, 2008 Board of Health meeting. In response to one of the questions that was asked at the last meeting regarding whether or not the Health Department has to absorb the salary increases. Mr. Williams and Mr. Watson both replied that the Board of Health has to absorb the increases. So there will not be any extra money in the FY2010 Budget.

EMD Serono – 45A Middlesex Turnpike – Chapter 43D Project

Mrs. O'Rourke stated the next item is EMD Serono, 45A Middlesex Turnpike.

Mr. Berube explained EMD Serono was previously known as Lexigen. Lexigen came before the Board about nine (9) years ago. Their campus is located behind the Naked Fish Restaurant on the Burlington line. They are a pharmaceutical company. They perform cancer research and work with DNA testing. They would like to expand their facility under Chapter 43D. The plans are in the Board of Health office if anyone would like to review them. They may be coming before the Board in the near future.

Mrs. O'Rourke asked if the Board Members had any questions. The Board Members did not have any questions.

Water Conservation Committee Update

Mrs. O'Rourke stated the next item under Board of Health Business is the Water Conservation Committee Update. Mrs. O'Rourke thanked Mr. Kenyon for the copy of the second meter usage that was included in the Board's package. Mrs. O'Rourke asked Mr. Kenyon if he would update the Board.

Mr. Kenyon explained that Dick Tracey a former member of the Water Conservation Committee attended a neighborhood meeting that was held regarding the proposed 672 apartments on Rangeway Road. Mr. Tracey provided us with the information that was discussed at that meeting. There is a concern with the size of the project and the amount of water that would be used. It is still being looked into. We also discussed the proposed power plant that would require forty (40) million gallons of water a year. The issue has not been resolved as to whether all of the water from the Town or some of the water from the Town and some of the gray water from the sewer treatment plant would be used. That has not been determined. The committee discussed the number of second meters, which has grown from 1200 in 2004 to 1600 to the present time. If we have to reduce the water usage, the first thing that should be looked at is irrigation systems because they waste a lot of water. The yield of safe sustainable water from the Concord River is 28 million gallons a day. If you use more than 28 million gallons of water a day the quality of the water would not be as good.

Mr. Berube asked has there been any discussion on proposing a moratorium on water usage. With all the new developments that are being proposed in Town such as the power plant and a new Chapter 40B project on Rangeway Road their water demands will be huge.

Mr. Kenyon replied that he would bring it up at the next meeting.

Mrs. O'Rourke asked the Board Members if they have any questions. The Board Members did not have any questions. Mrs. O'Rourke thanked Mr. Kenyon for the update.

OM Temple

Mrs. O'Rourke stated the next item is OM Temple.

Mr. Berube explained that the OM Temple is requesting an extension of the variance that was granted by the Board. This would be their second extension. You have a copy of a letter that I sent them dated December 18, 2008. January 12, 2009 I received a response from the OM Temple. They are looking for an extension because they are dealing with DEP. They are looking for approval of their plan relative to the Wetlands Protection Act. As I mentioned to the Board at the Board of Health meeting held in December the Conservation Commission failed to document their decision, so the OM Temple appealed it to DEP. The project was then remanded back to the Conservation Commission. The Conservation Commission did not want to have anything to do with the project. It reverted back to

DEP for review. Pending DEP's approval I would recommend that the Board grant an extension until DEP grants approval of the plan. Then the Board can revisit the project.

Mrs. O'Rourke asked if OM Temple is requesting the extension for a specified period of time.

Mr. Berube replied they are asking for one (1) to two (2) years. I think that because of the situation the Board should wait until we see what DEP is going to do before we grant an extension for that length of time.

Mrs. O'Rourke asked when was the first extension granted.

Mr. Tanden replied the Board granted a two (2) year extension in January 2007.

Mr. Berube replied that extension expires this month.

Mrs. O'Rourke asked since January 2007 what has been done.

Mr. Berube replied the project has been tied up with the Conservation Commission. I would recommend extending the variance until DEP renders a decision. Then the Board can look at what DEP has approved.

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

Mr. Kane commented that he would like to wait to see what DEP approves before the Board commits to a specified time on the extension. I would like to see the final set of plans.

Mr. Berube explained in the letter from Mr. Tanden he mentions another set of working plans. Mr. Berube stated that he does not feel comfortable with just granting a one (1) or two (2) year extension. I would like to see what DEP does and at that point the Board can take action.

Mrs. O'Rourke commented that Fact #1 states that there is one (1) set of finished and approved plans.

Mr. Berube replied that when he first talked to DEP the plans they were reviewing were not the ones that the Board of Health approved. It wasn't until Friday, January 9, 2009 that DEP received the plans that were originally approved by the Board of Health.

Mrs. Giroux commented that she would rather wait until everyone was working with the same set of plans.

Mr. Kenyon stated that he agreed that the Board should wait until DEP renders a decision and the same set of plans are used.

Mrs. O'Rourke asked for a motion.

Mrs. Giroux made a motion to grant an extension of the variance for the OM Temple Project until such time that the Department of Environmental Protection (DEP) grants approval of the project. At that time, the applicant must submit a new request for a variance extension along with a copy of DEP's written approval and a complete set of the plans approved by DEP.

Mr. Kenyon seconded. So voted unanimously.

Mall Liquors – 480 Boston Road

Mr. Berube stated that he would like to update the Board Members on the status of Mall Liquors, 480 Boston Road. Mr. Berube explained that on December 12, 2008, Health Agent, Angela Braun was conducting a routine inspection and if you recall at that time there were heavy rainstorms. There were several leaks throughout the establishment. The Board of Health issued an Emergency Closure. R & D Management did some temporary measures to alleviate the situation. Later that afternoon after a re-inspection of the establishment, we allowed them to re-open. We informed Mall Liquors that we wanted a long term plan of correction. This is not the first time we have gone in to Mall Liquors and water was dripping all over the place. We gave them to the end of December 2008 to respond to our request. We received a response back from R & D Management on behalf of Mall Liquors and they just detailed their efforts to date. They really did not indicate how they planned on resolving the situation. I reviewed the matter with Health Agent, Angela Braun and we sent out a second order of correction stating that we wanted a permanent solution to fix the roof or the Board of Health would suspend or revoke their permit to operate. We gave them until May 31, 2009 to fix the roof because of the weather conditions. If the roof is not fixed we informed them that their permit to operate would be suspended or revoked. Friday, January 9, 2009 R & D Management contacted me and we met to discuss the situation. They indicated that they were in the process of getting proposals to fix the roof. As soon as they reviewed the proposals they were going to present them to upper management for approval for the repair. They also indicated to us that they are looking to do some alterations to the mall and make some improvements.

Mrs. O'Rourke stated they are supposed to use the same footprint but they are going to cut out the middle and do some renovations.

Mr. Berube explained in the plans that were submitted for the Home Depot project, the area in front of K-Mart will remain. The plan is to move all the existing stores down by K-Mart and renovate that area. Mr. Berube stated that Angela Braun is present if any of the Board Members have any concerns that they would like to have addressed.

Mrs. O'Rourke stated that she has been in the store and there are tents hanging from the ceiling. Two of the employees told me the heating system is broken. Mrs. O'Rourke asked Mrs. Braun if she could you please check that out. Have they already received estimates for the roof?

Mrs. Braun replied that R & D Management told her that they have already received two

estimates and are waiting for a third. Currently the owner is out of town so they will contact him with the estimates as soon as he returns.

Mrs. O'Rourke stated that she would like Angela Braun to monitor the situation at Mall Liquors because it is the worst building in the mall. Mrs. O'Rourke informed the Board Members that Market Basket and K-Mart paid to have their own roofs fixed.

Mrs. Giroux stated that she knew someone that used to work for Mall Liquors and she told me there were mice in the backroom where the cartons and supplies are stored. That was in December.

Mrs. O'Rourke asked Mrs. Braun if she has seen any signs of mice.

Mrs. Braun replied that she did not notice any signs however she would check it out. Mrs. Braun commented that they do have service contract.

Mrs. O'Rourke asked the Board Members if they had any questions. The Board Members did not have any questions.

7:50 p.m. McFarland Cascade – Iron Horse Park – Appeal Hearing for Notice of Violation and Order for Correction

Mrs. O'Rourke stated the last item on the agenda is McFarland Cascade, Iron Horse Park, Appeal Hearing for the Notice of Violation and Order for Correction.

Mr. Berube stated that he would give the Board Members and the general public a brief history of what has been transpiring since April 2008. Mr. Berube explained that in spring of 2008 the Board of Health started receiving odor complaints in North Billerica. The Board of Health went out to investigate the odor complaints. At first it was very hard to detect where the odor was coming from and what it was. We finally detected the odor as described by the complainants. In late June, Tom Ferraro from the Fire Department became involved. The Fire Department was contacted when the Board of Health was not available so they had gone out to check the complaints as well. Deputy Fire Chief Tom Ferraro discovered the source of the odor and contacted Health Agent, Phavy Pheng. Phavy went out with Tom and found the odor was coming from the pole storage facility within Iron Horse Park, which was recently taken over by McFarland Cascade. After that we met with one of the complainants and brought him over to the pole storage area. The complainant confirmed that was the odor that he smelled. That further confirmed that we had the right source. Early July we issued a nuisance order and asked McFarland Cascade to come up with a plan of correction. They complied with that order. Their plan was to cover the poles with tarps. The plan seemed reasonable at that time. They proceeded to do that. Initially it seemed to help. Later in July we received new complaints. When we went out to check we discovered that McFarland Cascade was not following their plan of correction. We brought that to their attention and they made some adjustments and that seemed to help. As the summer went on we were still receiving complaints. In the fall the odor was most prevalent during the evenings and on the weekends. We received permission from the Town Manager, Bill Williams to allow Health Agents to

work after hours to confirm the complaints. Angela Braun and Phavy Pheng in fact confirmed the odor. During this time I had contacted McFarland Cascade, Les Lonning, the Director of Technical and Environmental Affairs, and brought this to his attention. I suggested that McFarland Cascade come up with a better plan or options because this plan was not working. It was pretty clear that by November, 2008 this plan was not working so we issued the second order to come up with a new plan of correction and hire someone with expertise to examine this situation to try to figure out why this is happening. McFarland Cascade appealed the order and requested a hearing. In the audience are many of the residents that have complained about the odor problem and can talk about their experiences.

Mrs. O'Rourke asked how many complaints has the Board of Health office received.

Mr. Berube asked Ms. Pheng if she could recall the number of complaints.

Ms. Pheng replied more than a dozen.

Mr. Berube explained some of the residents have complained more than once. Mr. Berube showed the Board Members a map of Iron Horse Park and pointed to the surrounding area where the residents that are complaining live.

Mr. Kenyon asked since McFarland Cascade has recently taken over the operation at Iron Horse Park, what kind of operation was there before McFarland Cascade.

Mr. Berube replied it is my understanding that this operation has been there since 1968. To the best of my knowledge this is the first time the Board of Health has received complaints. It appears that something has changed in the treatment process. From the many conversations that I have had with McFarland Cascade they have indicated that the process has not changed.

Mrs. O'Rourke asked the representative from McFarland Cascade to come forward and identify himself. Mrs. O'Rourke requested that anyone that wishes to speak must first clearly state their name and address.

Robert Fitzgerald, Goodwin/Procter LLP, Boston, MA identified himself and explained that he is representing McFarland Cascade. Mr. Fitzgerald introduced Steve Glennon, Operations Manager for McFarland Cascade. Mr. Fitzgerald explained that he has reviewed the Board of Health files and thought it would make sense to give a brief summary of what McFarland Cascade does, how they operate the facility and what steps were taken this past summer in response to the complaints and what additional steps have been taken since that point. Based on our review of the files we will explain what additional steps we propose to take. Mr. Fitzgerald stated that Steve Glennon can explain what has been taken place.

Steve Glennon, Operations Manager for McFarland Cascade, identified himself. Mr. Glennon explained that he lives in Billerica and has been employed with McFarland Cascade since October 2008.

This problem already existed when I started working at McFarland Cascade. I met with Ms. Pheng a couple of times to go over what the complaints are and how often the Board of Health has received them. Mr. Glennon stated that he would give the Board and residents a little background of what McFarland Cascade does. McFarland Cascade is the distributor of utility poles. We service Nationalgrid and Verizon. We have been located in Iron Horse Park, Billerica since 1968. McFarland Cascade was formerly known as For-Tek (Forest Technology Sales). McFarland Cascade took over the operation in February 2008. Seven (7) employees work in the building, two (2) of the employees live in Billerica. We receive treated lumber from down south, mainly out of Georgia. The poles come up by rail cars. We unload the rail cars and stage them on the ground. The contracts with Nationalgrid and Verizon require us to have a two-month supply of poles.

Mrs. O'Rourke asked which consists of how many poles.

Mr. Glennon replied approximately 2,500 to 3,000 poles.

Mrs. O'Rourke asked are the poles already treated.

Mr. Glennon replied yes the poles are already treated. They come up in various sizes for emergency situations. We used 3,000 poles for the ice storm in December 2008.

Mrs. O'Rourke asked other than storing the poles what else do you do with them.

Mr. Glennon replied we store and deliver the poles. The operation has been going on since 1968. The same people supply us with the poles, the same supplier treats them, the same drivers and the same vendors are used. Nothing has changed since we took over in February 2008.

Mr. Kenyon asked has anything changed in the treatment process.

Mr. Glennon replied the suppliers have told us that nothing has changed in the process. Everything is the same as it was before. I went over previous records regarding the inventories and the inventories on the ground are the same. We used the tarps to cover the poles to see if we could contain some of the odor and that does not seem to work. We hired temporary labor to help us take the poles off the rail cars and cover the poles with the tarps. I am trying to do what we could to help out and take care of the problem. We know that there is an aroma but not all of the aroma is coming from those poles. The poles have been there for forty (40) years.

Mrs. O'Rourke asked has any of your employees complained about the smell while they are working there.

Mr. Glennon replied no. One of the employees lives in the neighborhood where the residents that are complaining live. She does not smell the odor from her house. We are here to try to find a way to address this issue if it is us and make sure it doesn't happen again.

Mr. Fitzgerald explained that in addition to those steps, Les Lonning has contacted the manufacturer of the chemicals that is used to preserve the poles to see if an alternate formulation is available or in process. They are looking at a new formulation that has a good chance of resolving the odor of the poles. They have indicated that they are in the preliminary stages of testing. Within the next 30 to 60 days they should have a more definitive answer as to whether that chemical would be a viable alternative. Then McFarland Cascade would be working that chemical into their product line. The existing inventory would be drawn down. Preliminary indications are that we won't have definite information regarding that chemical for a couple of months.

Mr. Kenyon asked when you receive the poles do you keep each suppliers shipment separate.

Mr. Glennon replied the poles are stacked by size. The majority of the poles come from one supplier.

Mr. Berube asked are the poles themselves the same type of wood as before.

Mr. Glennon replied yes, the poles are a southern young pine.

Mr. Berube asked are they in the same condition as before.

Mr. Glennon replied according to my dispatcher they are. I have only been there since October 2008. The driver and dispatchers say they are the same poles.

Mr. Berube asked before the poles are treated is the process still the same.

Mr. Glennon replied yes, they take a tree cut the bark off of it, dry them and treat them and then dry them again. Then the poles are loaded on a rail car and shipped to Billerica. It usually takes 2 weeks for the shipment to reach Billerica. The poles are unloaded and stacked on the ground. We keep two months supply of poles on hand for our customers.

Mrs. O'Rourke asked do you sand the poles.

Mr. Glennon replied no we only store the poles. We have a bull truck that picks up the poles and puts them on a trailer and straps them down and delivers them.

Mr. Berube asked Mr. Fitzgerald if the alternate treatment may require any kind of a review by the Environmental Protection Agency (EPA).

Mr. Fitzgerald replied it may, depending on what the formulation of the product is. It will have fungicide and pesticide in it to prevent the poles from rotting because we do not want the poles to collapse when they are supporting utility lines. If necessary that product would have to undergo an EPA review. This is only a preliminary condition at this point.

Mr. Berube stated if that is the direction McFarland Cascade is going to take, then it would be some time before that switch is made.

Mr. Fitzgerald replied that is correct. The second avenue that is being explored is whether or not the supplier can stage the treated poles at the facility to allow some time to reduce offgassing prior to shipping the poles to the Billerica facility. It takes approximately two weeks for the poles to arrive from the point in which they are treated. The emissions from the poles drop with time. That is a logistical issue that is being worked with the supplier. We took the Board's suggestion and engaged the services of an environmental consultant to assist in developing a new plan of correction. Gale Hoffnagle of TRC has a long history of working in Billerica with complaints and air quality. He suggested some preliminary steps that could be done in terms of researching both the nature of the odors coming from the poles as well as investigating potential other sources for odors within Iron Horse Park. We noticed in our review of the documents in the file that some of the complaints indicated that perhaps materials in the canal were causing an aroma potentially or other sources. One step the consultant would be taking is the additional testing of the poles to try to identify other sources of the odor in the area and also try to correlate the time of the complaints that were received with metrological conditions to see whether the wind pattern had changed and had an effect on the nature of the problem. Then pending the conclusion of that he may propose an odor survey and testing be conducted in other various locations. We would propose to go forward with his work and continue to contact our chemical manufacturer and the supplier and keep the Board informed of those activities. We can inform the Board on a periodic basis or once we have formalized some of these issues we could submit a written report to the Board. We would expect that to take 30 to 60 days because of the testing that is being done at the manufacturer. We could come before the Board in April and report on the results of the testing.

Mrs. O'Rourke asked when the poles are shipped to Billerica are they covered or uncovered.

Mr. Glennon replied the poles are shipped uncovered.

Mrs. O'Rourke stated if the poles are coming from Georgia by rail uncovered the air must be circulating through the poles and drying them out. Mrs. O'Rourke asked are the poles wet when they come to Billerica.

Mr. Glennon replied no.

Mrs. O'Rourke stated so the poles are not wet with the creosote when they arrive in Billerica.

Mr. Glennon replied the poles are not treated with creosote, they are treated with #2 diesel fuel.

Mrs. Giroux asked is there a pattern to the complaints. Are there more complaints on cold wet rainy days versus hot summer days? Is there a trend?

Mr. Glennon stated when the poles come in they are not dripping wet, there might be a pole that does leak a little but generally that does not happen.

Mr. Kenyon commented if the poles are in a pile waiting to be delivered and it is raining the poles could be leaking on the ground and saturating the ground with the diesel fuel.

Mr. Fitzgerald stated he would look into that potential issue. When I was reviewing the files the complaints are intermittent. Some of the complaints indicate that at one point in time the odor is very strong and 15 minutes later the odor is gone and then later on in the day it comes back again. That is one thing we will be investigating.

Mr. Berube asked does McFarland Cascade own any other storage facilities in Massachusetts or New England.

Mr. Glennon replied yes, they have property that they lease in Taunton/Raynham and Westfield.

Mrs. O'Rourke asked are those facilities similar to the facility in Billerica.

Mr. Glennon replied we rent those properties. The main office is in Billerica. Everything is run out of Billerica.

Mr. Kenyon asked are there any complaints from those facilities.

Mr. Glennon replied not that he is aware of.

Mrs. Giroux asked how frequently do you receive deliveries.

Mr. Glennon replied approximately twice a week sometimes more and sometimes less depending on how many poles are being used.

Mr. Berube asked have you ever received complaints from the other locations.

Mr. Glennon replied not that he is aware of.

Mr. Berube asked is there any way of finding out.

Mr. Glennon stated that since October there has not been any complaints, prior to that I am not sure.

Mr. Berube asked are these other facilities located within a residential area or in an isolated area.

Mr. Glennon replied there are some residents close by.

Mrs. O'Rourke thanked Mr. Fitzgerald and Mr. Glennon. Mrs. O'Rourke stated that anyone in the audience that would like to comment, please raise their hand and when called upon please state their name and address.

Kayleen McNulty-Miner, 13 Burnham Road identified herself. Ms. McNulty introduced her husband Jim Miner. Mrs. Miner stated that it is her understanding that the poles are stored outside. When she called to voice her concerns regarding the odor and inquire about how many poles could be stored on the facility, and who is monitoring the facility nobody knew. I am concerned because I was told that some of the odor could be because the tarps could have been torn off. I am also concerned because some of the chemicals could seep into the ground and there are wetlands in that area. There is a pond behind the facility. I was surprised that they stored 2,500 to 3,000 poles in that facility. The fact they have been doing that business there since 1968 concerns me because of the history of Iron Horse Park

Mr. Kenyon asked how long have you lived there?

Mrs. Miner replied five (5) years. I think that people don't smell the odor sometimes because they are used to it. There were times in the summer when I could not open my windows because the smell was so strong. In the spring the smell was so strong I could not walk my puppy. I am concerned with the storage of the poles and the amount of poles being stored. Why can't the poles be stored in a building? The Board of Health should be the ones to tell McFarland Cascade what they can and cannot do. I have gone on line and researched this subject. In other states they have rules and regulations in place for storing wood.

Mrs. O'Rourke asked McFarland Cascade if they have a permit and how much does your permit allow you to store.

Mr. Glennon replied he does not know if McFarland Cascade has a permit. Mr. Glennon stated that he would find out.

Mr. Fitzgerald replied that Department of Environmental Protection (DEP) and Environmental Protection Agency (EPA) were contacted as part of this investigation.

Mrs. O'Rourke stated that she meant a permit from the Town of Billerica to store the poles.

Mrs. O'Rourke asked how large is the property.

Mr. Glennon replied four (4) acres.

Mrs. O'Rourke stated so you don't know how many poles can be stored on four (4) acres and if you have a permit to store the poles. There must be rules and regulations somewhere stating how many poles can be stored on four (4) acres of land. When the company started in 1968 they did not bring in the poles and leave them and walk away, somebody had to get a permit for the operation. Mrs. O'Rourke asked Mr. Glennon if he could look into the permit information regarding the storage of the poles.

Mr. Berube explained that he notified DEP and EPA. So far DEP has not taken any kind of action. I have contacted several people within DEP and pleaded for assistance however it has fallen on deaf ears. One person from EPA was willing to provide some assistance but they are moving very slowly and I have not received any information from them as of this time.

Mr. Fitzgerald explained that one (1) water sample was collected and that test came back below the standards. There haven't been any other significant findings on the site.

Carol Legro 5 Ashdale Road, North Billerica, identified herself. Ms. Legro explained that she has lived at 5 Ashdale Road since 1970. I am aware of what has been going on at Iron Horse Park. I am aware that this company has been there for a long time. There has always been a very mild scent coming from that area from time to time however my neighbors and I have adapted to the mild scent. This April there was a very sharp distinct change in the odor. It was not possible to keep the windows open. In the summer the neighbors in the area who have their air conditioners on have no idea how bad the odor is. Those of us who do not have air conditioning could not leave our windows open because of the odor. I had to go to a hotel five (5) weekends throughout the summer because I could not live in my home because the smell was so strong. I had people leave my home on Thanksgiving Day because the smell is that strong.

Mrs. O'Rourke asked what does the odor smell like.

Ms. Legro replied the smell is strong and burning. I usually cannot eat for the remainder of the day. I have burning in my nose and throat. Sometimes if I go down one end of the street or the other the smell is not there. It is very confusing. Some of the things I have noticed when I have walked along the back perimeter of the land on the residents side I see places where the poles are dumped there are huge black spots that look slick. One of my neighbors told me when those spots are wet they really smell. I noticed in the summer when it is hot and humid the smell is almost constant. I was constantly harassing the Board of Health all summer. It seemed to abate slightly in October for a couple of weeks. Then it started up again in November, I don't know why. Over the course of last month when it snowed the smell went away, then when the snow melted the smell was strong. Then when it snowed again the smell went away and then when the snow melted the smell came back again.

Mrs. O'Rourke stated the smell seems to be worse when the poles are wet.

Elaine Schepici, 17 Burnham Road, identified herself. Ms. Schepici stated that she smelled the odor on her way to the meeting this evening and the odor was very strong.

Ms. Legro stated that she would like to know what measurement standards are being used to measure the substances they are being used. Ms. Legro explained that she has read a lot of information about medical research regarding petroleum products having severe blood displacers. If the chemical odor is making us sick as we breath it in I can't imagine what it is doing to our immune system. Also I think there has been a change in the chemicals. If you look at the poles from a distance, you see there

are two different kinds of poles. The smell from the two kinds of poles is very different. The smell from one particular kind of poles is very strong. The other poles do not smell as much.

Mrs. O'Rourke asked Ms. LeGro if she has ever gone over to the poles on the property and smelled them to confirm that it is the smell that is permeating the air.

Ms. Legro replied she has been there but at a distance with permission and with a member of the Board of Health. I have smelled the odor stronger in one area and not as strong in another area.

Mrs. O'Rourke asked is that the same odor that you smell at your home.

Ms. Legro replied yes. I am concerned about the measurement standards. There are many new standards in environmental health referring to what can be breathed in and what should not be breathed in. I would like to see what the MSDS sheets show for the particular chemicals that are being used. We have a right to know and we have a right to research those chemicals on our own.

Mrs. O'Rourke commented that when looking at the map it is interesting to see that the odor complaints are coming from only one side of the map.

Ms. Legro stated that is where those huge black slick spots are located.

Laurie Zorba 3 Oak Street, North Billerica, identified herself. Ms. Zorba stated that she has lived in North Billerica for eleven (11) years. The first time I noticed this odor was in May 2008. I won't let my dog out during the day when I smell the odor and I shut my windows. I know the smell is definitely coming from the utility poles because I was on my way to work and along came a big truck with the poles on it. The cars were traveling far behind the truck because of the smell. I could smell the odor inside my car.

Tom Smith, 19 Carriage Road, identified himself. Mr. Smith stated that he has lived in Billerica for fourteen (14) years. I just started noticing the odor in spring of 2008. I never noticed it before. I have three children and I am very concerned about their health and what risks this situation poses.

Jim Miner, 13 Burnham Road, identified himself. Mr. Miner stated that he has lived at 13 Burnham Road for ten (10) years and he just noticed the smell on Monday, January 5, 2009. My question is has any independent testing been done besides taking McFarland Cascade's word for it to determine that the chemicals have not changed.

Mr. Kenyon asked do you mean testing of the product at the distributor.

Mr. Miner replied either at the distributor or when the poles arrive in Billerica. This is the first time I have heard of them using diesel fuel instead of creosote. Diesel fuel seeping into the ground is hazardous waste.

Mrs. O'Rourke stated testing should be done because everyone is talking about the same period of time and the same conditions. If the diesel fuel is seeping into the ground why hasn't anyone smelled it before? Is it because so much of the diesel fuel has seeped into the ground and is now permeating out of the ground? Is the diesel fuel permeating into the Middlesex Canal?

Mr. Miner stated that one of the health inspectors came down one day and when she stepped out of her car, she stated that the smell was awful. The wind changes the direction of the odor.

Mrs. O'Rourke stated that we should be testing something whether it is a sample of the water or a sample of the black slick spots.

Mark Sampson, 4 Carmel Drive, identified himself. Mr. Sampson stated that he walks his dog a couple of times a day and has not smelled the odor until spring of 2008. It smells like oil-based polyurethane or oil-based shellac. It is very strong just like when you open an oil based can of paint. I have smelled the odor four (4) to five (5) times a week since the spring. Before that I have never smelled it. I am an accountant and I am trying to figure out how many poles are received each week. You receive about five hundred (500) poles a week and have to maintain 2,500 to 3,000 poles. That is a lot of poles coming into Billerica.

Mr. Glennon stated on average we receive one hundred (100) poles on each rail car.

Mrs. O'Rourke asked how many times a week do you receive the poles.

Mr. Glennon replied on average two times per week so that means we receive approximately four hundred (400) poles per week..

Mr. Miner asked why do you need to have 2,500 to 3,000 poles stored on site.

Mr. Glennon replied because it is required by contract for Nationalgrid and Verizon in case of an emergency.

Mrs. O'Rourke stated she would like to see the permit that allows the storage of that many poles.

Mr. Miner commented with two major companies such as Nationalgrid and Verizon it seems like a lot of poles to be bringing into Billerica.

Ms. Legro stated she would like to know if at the other facility in Taunton the homes are as close, if they store the same number of poles, is their situation different and do they have any complaints.

Mr. Fitzgerald explained that the MSDS Sheet has been provided.

Mr. Berube replied the MSDS Sheet that we received is for Pentachlorophenol.

Mr. Fitzgerald replied that is correct that is the preservative.

Mr. Glennon stated the pentachlorophenl is in addition to the diesel. I believe on the MSDS Sheet it breaks down the chemicals that are used in treating the poles.

Mrs. O'Rourke asked is the pentachlorophenl the same as creosote?

Mr. Glennon replied no, creosote is used on railroad ties.

Ms. Legro explained that Norman Cousins wrote a book about the Anatomy of an Illness and after one weekend of smelling diesel fuel he got leukemia in Europe. There are thousands of articles on smelling fuel.

Mrs. O'Rourke stated that Deputy Chief, Tom Ferraro from the Billerica Fire Department is present to give a report.

Mr. Ferraro stated that he would like to clarify a couple of things that have been brought up. There is a correlation between weather conditions. When the Fire Department received the odor complaints it was on hot humid rainy nights. I live in that area and my son played baseball at Potters Field, some nights you could smell it and some nights you couldn't. There is a wind related correlation and the wind blows towards Carriage (Brunswick) Estates. We responded to nine (9) odor complaints in that area. On June 19, 2008 I went there to check out the smell. I then contacted Health Agent, Phavy Pheng and we visited the site on June 23, 2008. At that time we both smelled the odor. We talked to Jim Miner and a couple of other neighbors. Then Phavy and I went to BNZ and could not smell anything like the odor we smelled at Carriage Estates. Both of us left to conduct other inspections. We went back on June 25, 2008 and checked eastern terminal and could not smell anything. At that point we noticed the poles and confirmed the smell. Throughout June, July and August the Fire Department responded to many smell complaints.

Mrs. O'Rourke asked did the Fire Department receive any complaints after August.

Mr. Ferraro replied the last complaint we received was on September 6, 2008. Since then we have not received any more complaints.

Ms. Legro stated that we were told we did not need to call the Fire Department anymore. So we stopped calling the Fire Department.

Mr. Ferraro explained the Fire Department does not have a problem logging in the complaints after hours, however, the Fire Chief asked us not to send a truck out anymore because we knew where the smell was coming from.

Mrs. O'Rourke asked Phavy Pheng to give a report.

Phavy Pheng, Health Agent, identified herself. Ms. Pheng explained that she received her first complaint from Carole Legro on April 22, 2008. On April 23, 2008 I conducted an inspection and could not detect an odor problem. On May 14, 2008 Richard Berube, Director of Public Health received a complaint from a resident on Whitegate Road. Rich and I investigated the complaint and we could not detect any odor. The Fire Department notified us of the complaints they had received. Then I contacted Tom Ferraro and we conducted a joint inspection. We visited Ashdale Road and Burnham Road and could not detect anything. Next we proceeded to BNZ Materials and could not detect any smell. I scheduled another inspection at Iron Horse Park with Tom Ferraro on June 25, 2008 and we walked around until we finally detected the smell coming from the poles.

Mrs. O'Rourke asked how many times have you gone that area and detected the odor.

Ms. Pheng replied twice a week.

Mrs. O'Rourke stated twice a week for how many weeks.

Ms. Pheng replied starting June 25, 2008, sometimes it would be twice a week or more. Rich told me to respond to all the complaints whenever they come into the office. Rich told me to baby-sit this problem. When I responded to the complaints sometimes I would smell the odor and sometimes I would not smell it. In the fall the smell was stronger between the hours of five o'clock and lingered until early morning. Angela and I talked to Rich and told him that we could not verify the smell that was after work hours. Rich received permission from the Town Manager to allow us the opportunity to investigate the odor after hours.

Mrs. O'Rourke asked Mrs. Braun if she had investigated the complaints.

Angela Braun, Health Agent, identified herself. Mrs. Braun explained that she responded to Carole Legro's complaints at her property twice in the summer and a third time in the fall and I detected the odor every time I responded. The smell is intolerable and unacceptable and something has to be done. In my professional opinion it is a nuisance and has to be brought under control. I did a lot of research on pole preservatives.

Mrs. O'Rourke stated no testing has been done.

Mrs. Braun replied we do not have the resources to do the testing it is much more complicated than testing.

Mrs. O'Rourke stated we could send McFarland Cascade an order to do some testing. Why couldn't we have them test the black slick stuff that is on the ground?

Mr. Berube replied that this matter was brought to the attention of DEP and they felt that the black slick spots weren't recent enough for them to take any action since the company has been in operation since 1968. It wasn't an obvious spill that had recently occurred.

Mrs. O'Rourke stated as a good neighbor could we ask McFarland Cascade to have the soil tested.

Mr. Berube replied it is not their property. They are leasing the property.

Mr. Glennon replied Eastern Terminals, Inc. owns the property.

Mrs. O'Rourke asked why we couldn't ask the owner of the property to test the soil. We have to find out where the smell is coming from. We owe this to the residents. The next step is to ask the owner of the property to do the testing.

Mr. Kane stated the obvious odor needs to be addressed. The next step is we need to deal with any potential contamination of the ground and the wetland area nearby. Once you purchased the business you bought its history as well, therefore you are responsible for any impact that it has to the environment. Mr. Kane asked Mr. Glennon would you say these poles have some sort of an odor.

Mr. Glennon replied the poles do have an aroma.

Mrs. Giroux asked what do you think that aroma smells like.

Mr. Glennon replied there is an aroma however it is not as strong as diesel. Most of the poles are dry. It is diesel mixed with the wood. It is kind of a sweet smell.

Mr. Kane stated you explained that you are working with an air quality specialist, when did you contact the air quality specialist.

Mr. Fitzgerald replied mid December just before the holidays.

Mr. Kane stated you contacted the air quality specialist after this order was issued. This odor complaint has been going on for quite a while. You came up with a temporary plan and tried to address the problem by using tarps to cover the poles, which did not accomplish your goal. I am concerned because you knew this issue was going on and your temporary intervention did not work. It took this Notice of Violation and Order for Correction to be issued to you before you took the next step to contact an air quality specialist to try to identify the source.

Mr. Fitzgerald replied in response to the Board's suggestion in the Notice of Violation and Order for Correction we engaged an environmental consultant. The order was issued the day before Thanksgiving. We responded and retained an environmental consultant within the following two weeks. He has been to the site on January 2, 2009. He is on vacation but he will evaluate the situation when he returns. We should have the next steps for the Board before the next meeting.

Mrs. O'Rourke stated that first she would like to see the permit that allows McFarland Cascade to store that many poles at Iron Horse Park. Second I would like the owner of the property to be sent

an order to have some soil tested to see what could be seeping into the ground. Mrs. O'Rourke asked the Board Members if they would like to present come of the concerns that they would like to have addressed.

Mrs. Giroux stated that she would like to see the complaint correlation of delivery time to the weather conditions because it seems like the tarps could be making the problem worse due to heat, humidity, dampness, etc. Mr. Glennon told us nothing has changed with the process. I would like to see the MSDS sheet prior to April and then one after April something that may seem insignificant may have changed in the process. My next question is the same as Mrs. O'Rourke regarding the pole storage, delivery and also the cycle turnaround time of the poles. Are the poles coming in damp? Is the ground protected from the chemicals that may be seeping from the poles into the ground? How much space is being used on the property? Is the storage for the poles being rotated?

Mr. Glennon replied the poles are being stored in the same place as before.

Mrs. Giroux asked how long are the poles being stored in the same place and are they rotating the places for storing the poles.

Mr. Glennon explained when the poles come in on the rail cars the poles are dumped outside the rails. The poles have a designated area where they are stored.

Mrs. O'Rourke asked how much of the four (4) acres is being used.

Mrs. Giroux asked where are the poles being stored in comparison to the where these residents live. Maybe that would explain why some of the residents are smelling the odor and some of the residents are not affected at all.

Mr. Berube explained the portion of the property that the poles are occupying is at the rear of the property.

Mr. Glennon stated closer to the some of the residents.

Mrs. Giroux asked would it be possible to enclose the poles in a building.

Mr. Glennon replied I don't think so. The building would have to be large enough to store the poles and be able to drive a truck inside so that the poles can be placed on the truck for delivery.

Mrs. O'Rourke asked how much of the four (4) acres are actually used.

Mr. Glennon replied probably three (3) out of the four (4) acres.

Mrs. Giroux asked have you ever taken samples from the poles and had them tested to verify that what your suppliers are telling you is not contaminating the land, water or soil. Is that something McFarland Cascade may be interested in doing?

Mr. Glennon replied they will probably do that.

Mrs. Giroux stated that is all the questions she has at this time.

Mr. Kenyon stated that Mrs. Giroux covered most of the questions he had. There is a definite problem here. The only recommendation that I have is that someone should go back to the chemical suppliers and find out what could have changed in the process. This is definitely a health hazard that needs to be addressed.

Mr. Kane stated at this time all my concerns have been addressed by the rest of the Board Members.

Mr. Sampson stated I am not asking how McFarland Cascade manages their business but how their business is managed. I would like to know if the inventory is first in first out or last in first out.

Mr. Glennon replied usually it is first in first out but since there has been so many complaints we are taking the new stuff out first.

Mr. Sampson asked how could DEP say this problem is not a new problem. Based on the complaints you have heard tonight this problem has surfaced only within the last year. This problem has not existed for the past thirty-nine (39) years. This problem has not been this bad in the past. Can DEP be approached again?

Mr. Berube replied I have not given up on working with DEP. As I mentioned I have been dealing with the EPA. It is very frustrating not getting a satisfactory response.

Mrs. O'Rourke asked that a motion be made.

Mr. Berube stated the hearing should revert back to McFarland Cascade because they requested the appeal hearing. Mr. Berube advised Mrs. O'Rourke to ask them if they have a proposal.

Mrs. O'Rourke asked Mr. Fitzgerald if they have a proposal for the next steps to resolve this problem.

Mr. Fitzgerald replied yes. Our proposal is to provide the Board with the scope of the initial work to assess the situation and report on that to the Board to give them a sense of when can be completed and what it would consist of. In addition to that report, we will report on the progress made in terms of the discussions that we are having directly with the chemical supplier with their new product for treating the poles. We will also discuss with the supplier whether or not that stage and concept of

the process for treating the poles would be possible. The chemical supplier told us it would take 30 to 60 days before their testing would be completed. Our proposal is to come back before the Board with a report in 90 days. We would submit that information to the Board in advance of the April Board of Health meeting. Then come back before the Board at the meeting in April with our game plan.

Mrs. O'Rourke stated please add to your list that I would like to see the permit for storing the poles.

Mr. Berube stated that you have engaged a consultant while you are going through this process and then you want to report back to the Board before you actually come up with a plan of corrective action.

Mr. Fitzgerald replied we are trying to capture the benefit of that information before we develop a plan of action rather than doing things willy nilly without the input from our consultant. Also if the product is going to be changed that has the potential to be a very significant improvement in terms of the odor issues. The product change may address the problem. We would first like to evaluate the current situation and what could be done for the short term. And then proceed with the 30 to 60 day plan. Then we will report to the Board so that they have a full range of information proposing what our steps would be.

Mr. Berube asked Mr. Fitzgerald if McFarland Cascade is looking for additional time.

Mr. Fitzgerald replied yes, if the Board is willing to continue this hearing until the April meeting to allow sufficient time to fully assess the situation before developing a plan of correction.

Ms. Legro asked isn't this an emergency situation.

Mrs. O'Rourke replied the Board has to allow McFarland Cascade time to answer the Board's questions.

Ms. Legro stated in an emergency situation testing can be moved along more quickly.

Mrs. Giroux asked is it possible to have them come to the February Board of Health Meeting and each meeting thereafter to report on what has been done and what the results are up to that point. The Board realizes product development and testing are going to take some time. At least we know that they are doing something.

Mr. Kenyon stated we owe it to the residents to keep them updated on the progress.

Mr. Fitzgerald replied we are just trying to be responsive to the complaints. We would be more than happy to provide progress reports just that we will not be able to provide complete answers until all results are issued and that will take ninety (90) days.

Mr. Miner stated this has been going on since April 2008 and there have been many complaints filed in the months of June, July and August. It is now January 2009 why hasn't any testing been done? Why can't we get our own independent consultant to do the testing? Why do we have to wait for McFarland Cascade to hire a consultant to do the testing?

Mr. Berube replied we can pursue that avenue, but we will have to know what we are testing for. I would have to go to the Town Manager, Bill Williams and request funds to hire a consultant for the testing. That would all be contingent upon receiving the funds. We would also need permission from McFarland Cascade to go on the property because they are occupying the site.

Mrs. O'Rourke stated I don't care who tests the soil. They have to give us a report and I don't think they are going to jeopardize their profession. In all fairness to McFarland Cascade they seem to be on top of this situation. They just received our Notice of Violation before the holidays. I agree with Mrs. Giroux's idea that they come back with a progress report at the February Board of Health meeting. We have to give them a chance to answer the Board's questions.

Ms. Miner stated there are regulatory levels for the pentachlorophenl. Ms. Miner asked Mr. Berube if he was aware of that.

Mr. Berube replied that he is aware of the levels. That is the reason why I am trying to get DEP and EPA to respond.

Ms. Miner asked how does creosote come into play.

Mrs. O'Rourke replied we all made the assumption that the poles were treated with creosote. Mrs. O'Rourke asked Mr. Berube what kind of a motion he would like from the Board.

Mr. Berube stated the motion should be to continue the hearing until April to give McFarland Cascade enough time to study the problem and come up with a more effective solution. Mr. Berube suggested that McFarland Cascade get in touch with the Office of Technical Assistance because they can provide some helpful suggestions. Mr. Berube stated that he could provide the contact information.

Mr. Kenyon asked you mentioned getting the owner of the property involved. How can we get the owner to take some responsibility?

Mrs. O'Rourke replied that she wants Mr. Berube to write a letter to the owner and also get in touch with the Taunton/Raynham Board of Health to see if they have any complaints or concerns with McFarland Cascade in their area.

Mrs. Giroux made a motion to continue the hearing until the Board of Health Meeting on April 6, 2009. In the meantime, the Board is expecting McFarland Cascade to provide monthly progress reports answering the questions that have been asked this evening. The Board is also requesting written copies of all the progress reports that are reported on. The Board is requesting that Richard Berube,

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Director of Public Health send a letter to the owner of the property informing and updating him of this situation. The Board would like to see progress with the Environmental Protection Agency (EPA) to have the soil tested as quickly as possible. At the Board of Health Meeting on February 2, 2009 the Board would like to see a copy of the permit allowing the storage and the amount of the poles that can be stored on the property.

Mr. Kenyon seconded. So voted unanimously.

Mr. Kane requested that for the next meeting any preliminary air quality reports provided to the Board should consist of what work has been done, what testing has occurred and what has been looked at. The progress reports should specify what the preliminary findings are, what is consistent and what their plan is.

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

The Board adjourned at 9: 15 p.m.

Respectfully submitted,

Sandra Giroux
Secretary

Joanne M. White
Recording Clerk