

BOARD OF HEALTH MINUTES
MAY 4, 2009

Marie O'Rourke, Chair called the meeting to order at 7:30 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

The Board of Health Meeting Minutes of April 6, 2009 are not available.

CORRESPONDENCE

Philip Newfell – McFarland Cascade

Mrs. O'Rourke stated the first item under correspondence is Philip Newfell's letter regarding the McFarland Cascade article that was published in the Lowell Sun. Mrs. O'Rourke asked Mr. Berube if he would like to comment on Mr. Newfell's letter.

Mr. Berube explained that Mr. Newfell read the article in the Lowell Sun and is urging the Board of Health to pursue all possible venues, available within current Federal, Commonwealth and municipal regulatory practices, to expedite and eliminate this issue from affecting the surrounding neighborhoods.

Mrs. O'Rourke asked the Board Members if they had read the article and had any questions or comments.

The Board did not have any questions.

Mrs. O'Rourke stated it was brought to her attention that someone in that neighborhood was on a radio talk show.

Mrs. Giroux explained that Max Bowen is the talk show host and is present this evening.

Mrs. O'Rourke asked Mr. Bowen if anyone was present on his show.

Mr. Bowen replied he did not believe that anyone was on the show.

BOARD OF HEALTH BUSINESS

Water Conservation Commission Update

Mrs. O'Rourke stated the first item under Board of Health Business is the Water Conservation Commission Update. Mrs. O'Rourke asked Mr. Kenyon if he would update the Board.

Mr. Kenyon explained that at the Water Conservation meeting held on March 18, 2009 the committee gave unanimous approval for recommending to the Selectmen a mandatory water ban from May 1, 2009 to September 30, 2009. At the Selectmen's Meeting held on April 6, 2009 the Selectmen voted on the water ban. Two Selectmen voted for and two voted against the water ban. The new Selectmen voted for it so that broke the tie and the vote was 3 to 2. At that meeting Mr. Kenyon asked how difficult would it be for the Town to request an increase in the water quantity on the Town of Billerica's permit. According to John McGovern, Water Superintendent DEP would grant the request however they would make sure that the Town of Billerica is doing everything they can to conserve water before they would grant the increase.

Mrs. O'Rourke asked Mr. Kenyon if anyone from the Water Conservation Committee has been on BATV to explain the importance of water conservation. Many of the Billerica residents watch BATV.

Mr. Kenyon replied a representative has been on BATV twice and they plan on going on again to explain the importance of conserving water. Ed Mallet wrote an article on water conservation and distributed it around town so that residents are aware of how important water conservation is.

Mr. Reader asked are they still going to pursue replacing the water meters.

Mr. Kenyon replied the committee still talks about replacing the meters however it is too expensive and the town does not have the money at this time.

Mr. Reader stated the homeowner does not have to pay for the new meter.

Mr. Kenyon replied that is correct. There has been talk about replacing the meters because the old meters run slower and use more water. The committee has talked about instituting a program to replace all the water meters in Town which would take about ten years to complete. Replacing the meters would save a lot of water.

Billerica Lions Club Carnival

Mrs. O'Rourke stated the next item is the Billerica Lions Club Carnival.

Mr. Berube explained the annual Billerica Lions Club Carnival will be held from Wednesday, May 6, 2009 to Sunday, May 10, 2009 in the parking lot at the Billerica Mall, 480 Boston Road. The Health Department will be conducting inspections to make sure they comply with the State Sanitary Code.

Swine Flu Update

Mrs. O'Rourke stated the next item is the Swine Flu Update also known as H1N1.

Mr. Berube explained two (2) cases of the Swine Flu have been reported in Lowell. We acted very quickly and notices were distributed to all Town employees and the school system so that the children could bring the information home to their parents. The notices included information about what the Swine Flu is and what precautions should be taken for protection. Mr. Berube explained that this afternoon he received a notice from the Department of Public Health that there is one confirmed case in Billerica. The child is four years old and has been hospitalized because of an asthmatic condition. The child is now home and doing well. The mother is receiving an anti-viral medication for her own protection. The case is under control.

Mrs. O'Rourke asked do you know how the child contacted the Swine Flu.

Mr. Berube replied he did not have all the details at this time. Christine West, Public Health Nurse is following up on this case. Mr. Berube explained that he would keep Marie O'Rourke, the Chair informed when more details become available. Enclosed in the Board's package are several articles on the Swine Flu and a Fact Sheet with questions and answers about the flu. All latest information regarding the Swine Flu has been posted on the Billerica website, the CDC website and the Department of Public Health website.

Mrs. Giroux asked when the information was sent out to all the schools.

Mr. Berube replied the information was sent out Thursday, April 30, 2009 or Friday, May 1, 2009.

Mrs. Giroux stated that she talked to 15 to 20 parents and as of Friday, May 2, 2009 they had not received the information.

Mr. Berube replied the information was put together Thursday or Friday morning. At this time the cases are pretty mild. It is not the deadly virus that everyone thought it was going to be. There will not be any school closings or drastic measures taken at this point. For anyone that becomes ill the recommendation is to stay home, drink plenty of fluids and get plenty of rest. Just as with seasonal flu

if you have extenuating circumstances such as a respiratory illness or are over 65 or under the age of 2 or your immune system is compromised you may want to seek additional treatment from your doctor. The Swine Flu cases should be winding down.

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

The Board Members did not have any questions.

McFarland Cascade Progress Report

Mrs. O'Rourke stated the last item under Board of Health Business is the McFarland Cascade Progress Report.

Mr. Berube explained that as you can see by the report McFarland Cascade is following their Plan of Action. I visited the site last week to see how things were going. I noticed that the inventory has been reduced. I spoke with Steve Glennon and he indicated that he has not received any more shipments. They are trying to clear out the old poles and reorganize the area for the new poles in the future.

Mr. Kenyon asked what would be the next step if the Plan of Action does not work.

Mrs. O'Rourke stated that she did not know. Mrs. O'Rourke directed the question to the Director, Mr. Berube.

Mr. Berube explained that we would have to look for other sources. I have spoken with DEP and they have indicated that they are going to come out at some point and do some soil sampling. I have also spoken with the EPA and they indicated that they would be willing to come out and give a presentation about the Iron Horse Park Superfund Site and answer any questions from the residents that may attend. I will work on the arrangements with both of them.

Mr. Reader asked Mr. Berube if he would post the meeting so that the residents would know about the meeting.

Mr. Berube replied the Board of Health will get the word out when and where the presentation will be given by the EPA. There is plenty of interest on what is going on at Iron Horse Park with McFarland Cascade.

Mr. Reader asked is DEP only going to do soil testing at the McFarland Cascade site.

Mr. Berube replied he did not know. I have not spoken directly with the people that are coming out. They will contact me before they come out so that I can make the appropriate arrangements.

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

The Board Members did not have any questions.

7:45 p.m. Farley White Interests – 37 Manning Road – Request Variance for work within the Flood Plain

Mrs. O'Rourke stated the first item on the agenda is 37 Manning Road, Farley White Interests requesting a variance for work within the Flood Plain.

Jeffrey Brem with Meisner Brem Corporation identified himself. Mr. Brem explained that he is representing Mr. Sam Altreuter and Farley White Interests Management Company the owners of the property. Mr. Brem pointed to the plans and showed the location of the project at the Industrial Subdivision at 37 Manning Road. Behind the property was a large wetland area in the 1970's. A portion of the property was developed and some stormwater improvements were done. The wetland area has become a pond. About five (5) years ago the pond had some beaver problems that caused damage. The beavers are now gone. Mr. Brem showed the original site plan from the late 1970's. He pointed to the building and the parking lots in front and out back. What they proposed and were allowed to do to the wetland back then was to build a stormwater facility and dam it up with an earthen dam. They put an overflow device back there and turned a leaching septic tank upside down and that was the inlet pipe. They designed an 8" outflow pipe, which is the main overflow pipe and above that is the spillway. Normally when a spillway is designed it is built somewhere else. They did it right on top of the septic tank. They installed an 11" x 18" oval pipe. We cannot find the 8" pipe it is probably sealed up. The overflow pipe is now acting as the primary discharge for the facility. There is ponding at a much higher elevation than what was originally designed. This has caused the whole area to be under water. There is evidence of over topping. It is very unstable and unsafe. The reason Mr. Altreuter got involved was because the back parking lot ices up every year and that is where his trucks unload and some of the employees have fallen on the ice. Part of the problem is that they installed roof scuppers on the edge of the building and the water just pours from the roof directly to the paved loading area behind the building. During the winter months, snowmelt and surface runoff often freezes on the paved loading area, causing an unsafe situation for visitors to the site. So to solve this problem Mr. Altreuter came to Meisner Brem and requested that we design a plan to correct this problem. We proposed a design to collect roof runoff through a proposed exterior manifold system, which will be connected to a subsurface drainage pipe to convey the water towards the wetland area, greatly reducing the surface water over the paved loading area. Mr. Brem showed some pictures of the overall growth of the area, the upside down leaching facility, the ponding, the overflow and the outlet pipe. So to correct this problem we would just pick up the elevation at the culvert and work our way up by doing this we could lower the water by a foot. This will accomplish the objectives. Mr. Brem pointed to the building and the parking lot and explained where and how the work would be done. We are going to go to the side of the current structure and build another structure and then abandon the original structure. There would be very little grading. As added protection against a potential washout of the earth dam, a stabilized rip rap spillway will be constructed in the proximity of an existing 1' wide by 1' deep channel that exists across the dam. The proposed emergency spillway will stabilize the potential overflow area. We have received approval from the Conservation Commission. We have contacted Mike Callahan from Beaver Solutions to install the proposed protective fencing around the new dam outlet structure. The fencing shall be maintained

by Beaver Solutions or other qualified professionals in beaver activity management. We are requesting a variance for three reasons. The first one is for the repairs that are required to the existing dam outlet structure that is not functioning properly. The second is to construct a stable emergency spillway that is required because the proposed overflow outlet is acting as a primary discharge pipe and the third is to maintain the existing roof drains that lead to the iced traveled ways.

Mrs. O'Rourke asked are those the original plans for the site.

Mr. Brem explained that this project was originally permitted and designed through the Town in 1979 and was completed in 1981 at that time they did some retrofits. The difference was that an engineer was supposed to maintain the project and make sure it was working properly on an annual basis. However, that was never done.

Mrs. O'Rourke asked what businesses are located in that building.

Mr. Brem replied the units are leased out to different tenants.

Mr. Kenyon asked is part of the plan going to be to maintain the structure.

Mr. Brem replied yes. It is on their property and it is their responsibility to maintain. My client, Sam Altreuter is a civil engineer and now that he is aware of the problem and is going to spend the money to fix it, he will maintain it.

Mr. Berube explained an Operation and Maintenance Plan was submitted to the Health Department as part of this project.

Mr. Brem stated this project is different than most projects. This project is going backwards to fix the problem with no real economic return.

Mrs. O'Rourke asked Mr. Berube if he had any comments.

Mr. Berube explained that Jeff Stearns from Woodard & Curran is present tonight. On behalf of the Board of Health Jeff has reviewed the project and is present to answer any questions that the Board may have. Jeff's report is included in the Board's package.

Jeff Stearns, Woodard & Curran identified himself. Mr. Stearns explained that he has reviewed this project for the past six months. I have issued about four (4) letters to the Conservation Commission and two (2) letters to the Board of Health. I have reviewed the project for potential impacts to the Flood Plain and compliance with applicable drainage regulations. As it stands right now we are in agreement with the design of the structure. In the Conservation Commission's Order of Conditions the applicant is to submit an annual report to them documenting all inspections. The Operation & Maintenance Plan is to be inspected after severe storm events and a report will be submitted on a quarterly basis. I agree with the design of the structure, I have reviewed the flooding impacts and the applicant is not increasing the

peak rate of runoff from the site they are actually decreasing the peak rate of runoff by approximately 70% and compared to the existing conditions that is acceptable. In the January 15, 2009 stormwater report submitted to the Conservation Commission there is a breakdown of the proposed peak rate of runoff from 1980 to what the peak rate of runoff is now. This is a good project because if the improvements are not addressed it could lead to downstream flooding and dam failure.

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

The Board Members did not have any questions.

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

No abutters were present.

Mr. Berube suggested that Farley White also provide the Board of Health with an annual report from the Operation and Maintenance Plan.

Mr. Kenyon made a motion to grant a variance of Board of Health Rules and Regulations, Chapter 5, Section 5.5.005 (1) (2) in order to repair and improve a dam drainage structure within the Flood Plain based on the following findings of fact and pursuant to the following conditions:

FINDINGS OF FACT

- 1) The work described in the applicant's request is within an area subject to protection under the Board of Health's Rules and Regulations, Chapter 5, Section 5.5.005 (1) (2).
- 2) The applicant proposes to repair and make improvements to an existing earthen dam located within the Green Engineering Flood Plain as identified on Map #89. The site does not fall within the FEMA Flood Plain. The existing dam outlet structure is in failure and has created a flooding problem behind the building at 37 Manning Road.
- 3) This project was reviewed by Jeffery Stearns of Woodard & Curran, the Board of Health's Consulting Engineer, for potential impacts to the Flood Plain and compliance with applicable drainage regulations. In an engineering report dated April 10, 2009, Mr. Stearns concludes that the proposed project represents an improvement when compared to present conditions and decreases the future potential for downstream flooding and dam failure.
- 4) The Board of Health has determined that the actions proposed by the applicant are adequate measures to protect the public health and environment and complies with the intent of Board of Health Rules and Regulations. Further, approval of the applicant's request will not be detrimental to the public health and environment.

CONDITIONS

Standard conditions number 1, 2, 3, 4, 5, 6, 8, 9, 10, 11, 12, 13, 14, 15, 18 20 and 21 in accordance with the Board of Health regulations and Special Conditions:

- A) All construction must be in accordance with plans submitted for review and approval, prepared by Meisner Brem Corporation dated August 25, 2008 and revised to January 14, 2009 and stamped by Jeffrey A. Brem R.P.E. # 34780.
- B) The applicant must obtain and record an Order of Conditions from the Billerica Conservation Commission at the Registry of Deeds and a certified copy of the conditions must be returned to the Board of Health.
- C) Prior to beginning any work, the applicant shall submit a construction schedule and notify the Board of Health at least 48 hours in advance of any site work.
- D) The drainage system including but not limited to the new outlet structure, emergency spillway and roof drain system shall be maintained in accordance with the Dam and Outlet Control Structure Operation & Maintenance Plan. An annual report stamped by a professional engineer that details the performance and inspections of the system and maintenance and repair activities shall be submitted to the Board of Health.
- E) Proposed protective fencing around the new dam outlet structure shall be installed and maintained by Beaver Solutions or other qualified professionals in beaver activity management.

Mr. Reader seconded. So voted unanimously.

7:55 p.m. Greg Eaton – 2 Alderwood Avenue – Request Variance for work within 100 feet of the Flood Plain

Mrs. O'Rourke stated the next item on the agenda is Greg Eaton, 2 Alderwood Avenue requesting a variance for work within 100 feet of the Flood Plain.

Joel Williams, Dresser, Williams & Way, Inc. identified himself. Mr. Williams stated that he is representing Greg Eaton. Mr. Williams explained and passed out copies of the slightly revised plans as a result of the Conservation Commissions request to construct within twenty-five (25) feet of the Flood Plain. The variance request is to construct a new single family dwelling within twenty-five (25) feet of the flood plain. The proposed project is to tear down the existing house and construct the proposed house sixteen (16) feet away from the Green Engineering Flood Plain. The original variance that was submitted was to be greater than twenty-five (25) feet. The first revision showed the new dwelling nine (9) feet from the Green Engineering Flood Plain, which triggered the public hearing. The Conservation Commission wanted us to push the new house footprint further back and to the side of the property. In doing that we had to push the house back otherwise we would have been going into an existing sewer.

manhole. The proposed footprint for the new house would now be back to sixteen (16) feet versus the original requested nine (9) feet. We are here to request permission for a variance to construct the new dwelling within twenty-five (25) feet of Flood Plain.

Mrs. O'Rourke asked will this house be connected to town sewer.

Mr. Williams replied yes the sewer that you see on the plan is actually a wet well for a low pressure pump.

Mrs. O'Rourke asked why is there a dry well on the property.

Mr. Williams replied that is one of the Conservation Commissions requirements. They like to see groundwater recharged whenever possible.

Mr. Reader asked is the proposed house further away from the street.

Mr. Williams replied yes. Mr. Williams pointed to the plans and explained the proposed location of the new house.

Mr. Kenyon asked how far back is the river.

Mr. Williams pointed to the edge of the river and the Flood Plain.

Mrs. O'Rourke asked Mr. Berube if he had any comments.

Mr. Berube stated that he did not see an issue with this project. The house is far enough away from the Flood Plain. Mr. Berube explained that he visited the site and the house sits on an elevated area. There shouldn't be any problem with flooding. I talked to the neighbor next door who said he has lived there since 1951 and he has never seen the water come up that high.

Mrs. O'Rourke asked how big is the lot.

Mr. Berube replied over 22,000 square feet.

Mr. Kane asked are you 8 feet off the property line.

Mr. Williams replied yes. Mr. Williams explained that the lot was considered to be a grandfathered lot. The structure will be placed 8 feet versus the original 7.5 feet because the measurement is taken from the side not the foundation walls.

Mr. Berube asked would that require a zoning variance.

Mr. Williams replied no. My client talked to Milton Kinney, Inspector of Buildings regarding this lot. This lot was grandfathered. Mr. Kinney informed my client that he would allow the 7.5 feet. However we made it 8 feet to satisfy the request of the Conservation Commission.

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

No abutters were present.

Mrs. Giroux made a motion to grant a variance of Board of Health Rules and Regulations, Chapter 5, Section 5.5.005 (1) (2) in order to construct a single family dwelling within one hundred (100) feet of Flood Plain based on the following findings of fact and pursuant to the following conditions:

FINDINGS OF FACT

- 1) The work described in the applicant's request is within an area subject to protection under the Billerica Health's Rules and Regulations, Chapter 5, Section 5.5.005 (1) (2).
- 2) The applicant proposes to raze an existing dwelling and construct a new single family dwelling. The new dwelling will be serviced by town water and sewer.
- 3) The location of the proposed dwelling will be within sixteen (16) feet and forty-six (46) feet respectively of the Green Engineering Flood Plain elevation 119 (adjusted) and the FEMA Flood Plain elevation 117. There will be no filling within the flood plain.
- 4) The Board of Health has determined that the actions proposed by the applicant are adequate measures to protect the public health and environment and complies with the intent of Board of Health Rules and Regulations. Further, approval of the applicant's request will not be detrimental to the public health and environment.

CONDITIONS

Standard conditions number 1, 2, 3, 4, 5, 6, 9, 10, 11, 12, 13, 14, 15, 18 and 21 in accordance with the Board of Health regulations and Special Conditions:

- A) All construction must be in accordance with plans submitted for review and approval, prepared by Dresser, Williams, & Way, Inc. dated December 19, 2008 and revised to April 29, 2009 and stamped by Joel Williams RPE#29522.
- B) A deephole test must be performed at the proposed location of the proposed dwelling to determine the groundwater elevation. The minimum vertical separation distance from the basement floor above the high ground water elevation shall be two (2) feet pursuant to Billerica Health

Regulations. Documentation must be submitted to the Board of Health prior to the approval of any permits.

Mr. Kenyon seconded. So voted unanimously.

8:05 p.m. Amy McDowell– 56 Riveredge Road– Request Variance for work within the Flood Plain

Mrs. O'Rourke stated the next item on the agenda is 56 Riveredge Road, Amy McDowell requesting a variance for work within the Flood Plain.

Malcolm McDowell stated that he is representing his daughter Amy McDowell and her husband Tim O'Boyle. Mr. McDowell explained that they plan to purchase my home at 56 Riveredge Road. We have moved to Pocasset, MA. They are proposing to tear down most of the structure and build a new structure. The new structure will be a 1,400 square foot structure on the existing footprint. There will be no increase to the impervious area. We are reconfiguring one portion of the house to make it energy efficient. In order to provide more compensation we are taking some of the foundation off the rear of the house. We will increase the storage by 11 cubic feet. Since the Green Engineering Flood Plain is the same as the FEMA Flood Plain and since both flood plains go around the exterior perimeter of the structure we are requesting a variance for construction within 0-25 feet of the Flood Plain. The current structure is at elevation 122.25 and the Flood Plain is at 119. We will be constructing at that same elevation and the minimum vertical separation distance from the basement floor above the high ground water elevation shall be two (2) feet pursuant to Billerica Health Regulations. That is the entire proposal.

Mrs. O'Rourke asked are you only going to raze part of the existing house.

Mr. McDowell replied yes. I am keeping the garage, the wall common to the garage and the foundation and the front foundation wall.

Mrs. O'Rourke asked why.

Mr. McDowell replied because there is no need to take it down.

Mrs. O'Rourke asked how old is the house.

Mr. McDowell replied the house was built in 1937. It is fairly new.

Mrs. O'Rourke asked how many car garage is it.

Mr. McDowell replied it is a two (2) car garage.

Mrs. O'Rourke asked is the garage going to remain a two (2) car garage.

Mr. McDowell explained that he came before the Board of Health in 1990 for a permit to construct the garage.

Mrs. O'Rourke asked is there anything above the garage.

Mr. McDowell replied there is a loft above the garage.

Mrs. O'Rourke asked does anyone live in the loft.

Mr. McDowell replied yes.

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

Mr. Berube stated that he did not have an issue with this variance request. The house is going to be on a slightly smaller footprint than the existing dwelling and there will be a slight decrease in the loss of flood storage and impact to the Flood Plain.

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

The Board Members did not have any questions.

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

Ralph Burke 63 Riveredge Road, Billerica identified himself. Mr. Burke asked is the structure going to be so high that it would block the sunlight coming in from the West. Most of the structures that are being built in Billerica are too high.

Mr. McDowell replied the structure will conform to the Building Regulation 35B.

Mr. Burke stated the house is heated by oil and there has been an oil slick going into the Concord River.

Mr. McDowell replied my oil tank is in the garage and the garage floor is above the flood plain.

Mr. Burke stated your house looks like it is built on a slope and there is a lot of erosion. We have gas heat on the street. Is it possible for you to hook up to gas?

Mr. McDowell replied that he is thinking of installing a gas furnace but no final decision has been made. The oil tank is above the flood plain and it is recognized as being safe.

Mr. Burke stated a couple of times when he went fishing he noticed there was an oil slick on the Concord River.

Mr. McDowell stated the oil is not coming from my house.

Mr. Kenyon asked how far away is your house from the Mariner.

Mr. McDowell replied about a third to half mile from the Mariner.

Mr. Kenyon asked do you think that some oil could be coming from the boats on the river.

Mr. McDowell stated there is oil released by the biomass. I have lived on the river for 37 years and I have not seen any oil on the river.

Mrs. O'Rourke asked if there are any other abutters present that would like to comment.

Mr. Burke asked are you going to connect to town sewer.

Mr. McDowell replied yes, we will tie-in to town sewer.

Mr. Kane made a motion to grant a variance of Board of Health Rules and Regulations, Chapter 5, Section 5.5.005 (1) to raze the existing single family dwelling and construct a new single family dwelling in Flood Plain based on the following findings of fact and pursuant to the following conditions:

FINDINGS OF FACT

- 1) The work described in the applicant's request is within an area subject to protection under the Billerica Health's Rules and Regulations, Chapter 5, Section 5.5.005 (1).
- 2) The applicant proposes to raze an existing single family dwelling located in the Flood Plain in order to construct a new single family dwelling. The attached garage shall remain and the new construction shall utilize a portion of the existing foundation. The proposed dwelling will be serviced by town sewer and water.
- 3) The proposed dwelling will occupy a smaller footprint than the existing dwelling. This will result in a decrease in the loss of flood storage and impact to the Flood Plain. There will be no change of existing grades.
- 4) The Board of Health has determined that the actions proposed by the applicant are adequate measures to protect the public health and environment and complies with the intent of Board of Health Rules and Regulations. Further, approval of the applicant's request will not be detrimental to the public health and environment.

CONDITIONS

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

- A) All construction must be in accordance with plans submitted for review and approval, prepared by Noonan & McDowell, Inc. dated February 2, 2009 and stamped by Malcolm P. McDowell PLS#29420.
- B) The new dwelling shall be constructed 3.3 feet above the 100 year flood plain elevation 119 and not lower than elevation 122.3 (first floor elevation).

Mr. Reader seconded. So voted unanimously.

8:15 p.m. John Davies– Complaint of Continuous Annoying Noise from RWE Schott Solar – Rescheduled Hearing

Mrs. O'Rourke stated the last item on the agenda is John Davies, rescheduled hearing regarding a complaint of the continuous annoying noise from RWE Schott Solar. Mrs. O'Rourke explained that Mr. Davies at one time had requested to come before the Board and after he spoke with Milton Kinney, the Building Commissioner in my office several weeks ago he decided that it was not necessary. However, something has happened and Mr. Davies decided that he wanted to come before the Board.

John Davies 4 Hearthstone Circle, Billerica identified himself. Mr. Davies explained that he was scheduled to come before the Board of Health on March 2, 2009 and the meeting was cancelled. Then I was scheduled for another meeting, however I was traveling on business so I could not make it. I was available to attend this meeting. I would like to provide the Board with the petition that was submitted to the Board of Selectmen. The petition has 51 signatures from 7 different roads in the area where I live. RWE Schott Solar has been running their vacuum equipment and producing a lot of noise. It was the continuous noise that disturbed the neighbors. We originally filed a complaint with the Board of Health and received confirmation July 15, 2004. We have been dealing with this problem since 2004. The basic problem is that we are complaining about the continuous noise being in violation of the by-laws. We received feedback stating that the noise was not too loud. It was not a question of how loud the noise was it was that the noise is continuous. We were told a group would review the complaint and someone would be available for us to contact when the noise level is high. Every time we tried to get something done we would get a letter back stating that RWE Schott Solar is not in violation of the noise by-laws. Studies were done to prove that they were below the maximum noise level. It is not the noise level it is the continuous noise that is driving the residents crazy. When I talked to Mrs. O'Rourke on the phone Mr. Kinney, the Building Commissioner was there at that time, he stated that we had to check with Town Counsel to make sure that we were reading the by-laws correctly. Mr. Kinney stated that there is a separation between the continuous noise level and the limits of the Decibels. Mr. Davies asked Mr. Kinney if he has received affirmation from Town Counsel regarding the by-laws.

Mr. Kinney replied yes he did.

Mr. Davies stated the fact that Schott was being told that they were in compliance with the by-law because they were below a certain level is incorrect. For the past 4-6 weeks the noise has been lower. Schott has installed a noise-extenuating device. The noise is very low tonight. I want to make

sure the noise complaint is on record. Schott Solar has shown that they have ways to reduce the noise. We want to make sure that the Town understands and agrees that it is a continuous noise problem and not the noise level that we are complaining about. We would like to keep the complaint open in case the noise becomes intolerable again. The noise level has been good for the last 4-6 weeks but we have been fighting this complaint for the past 4 years. Mr. Davies requested that the complaint be documented and the file be kept open for awhile. Mr. Davies stated that he is relieved that the Board has done something about this problem. Mr. Davies thanked the Board for their time and attention.

Mrs. O'Rourke stated to her knowledge no one has ever come before this Board about the noise problem at Schott Solar.

Mr. Davies explained that he has a case number and the file from the Board of Health office that was opened in 2004.

Mrs. O'Rourke asked Mr. Davies if she could see the file.

Mr. Davies showed Mrs. O'Rourke the file.

Mrs. O'Rourke asked Mr. Berube if he would explain what has transpired.

Mr. Berube explained that the Building Department was the lead agency in investigating this particular complaint. The Board of Health, Building Department and Police Department can all investigate noise complaints. In this particular matter the Building Department took the lead. So I did not see a need to duplicate the efforts that were being taken by the Building Department. Mike Kinney is present to explain to the Board what actions his department has taken. Schott Solar is also present tonight to explain what has been going on. Then I will explain where this case stands with the Health Department.

Mr. Kenyon asked where is RWE Schott Solar located.

Mrs. O'Rourke explained that Schott Solar is located near the 99 Restaurant on the Middlesex Turnpike.

Milton Kinney, Building Commissioner for the Town of Billerica, identified himself. Mr. Kinney explained that it has been a long process with Schott Solar. At one point Schott Solar was not sure if they were going to remain in existence. We issued the complaint and they addressed it. They addressed the problem by turning down one of the dust turbines and shutdown the other one, limiting the operation to one turbine. They also did something to the motors that lessened the RPM's. Schott Solar started their full operation back up and the noise returned and so did the complaints. We informed Schott Solar and Arthur Gutierrez, the landlord of the facility about the noise complaint and they addressed it again. Schott Solar has had several noise evaluations done by Noise Control Engineering, Inc. The studies have come back that they were in compliance with the local and state ordinances but barely in compliance. A question was also raised about a droning noise. So this last time Schott Solar

put a silencer around one of the dust collectors to see how it worked. They had it retested and the results were positive. So they went ahead and ordered another silencer and installed it around the second dust collector. They redid the test and it is 15 Decibels below the minimum noise level.

Mr. Davies stated when we first started it was 1 Decibel below the town maximum level in terms of excessive noise. There was a misinterpretation with the Town, the noise level was never our complaint it was the continuous droning noise that we were complaining about. Schott was in compliance but they were in compliance with the maximum noise level not the droning issue.

Mr. Kinney stated that we are only as good as the laws that we have to work with. Ray Fisher, a Town Meeting Representative and a Noise Engineer designed that law, which is pretty stringent. The studies came back in compliance. After several tests were completed and confirmed that Schott Solar was in compliance I drafted a letter that stated no further action would be taken by the Building Department because Schott Solar is in compliance. It is a black and white situation. You are either in compliance or you are not. I can not put Schott Solar on probation.

Mr. Davies asked Mr. Kinney what he meant by being in compliance.

Mr. Kinney explained Schott Solar is in compliance with the dB noise level.

Mr. Davies stated we never based our complaints on the dB level, which you were responding to.

Mr. Kinney explained the droning was there but the noise level was there also.

Mr. Davies stated there is a combination that goes into the droning noise being annoying. When we complained we were told that Schott Solar was in compliance because of the noise level. That is when we disagreed with the various departments in Town. Unfortunately it is my understanding that only recently the town agrees that the continuous noise is the controlling part of this problem.

Mr. Kinney stated that he can't attest to the droning. As far as the Town of Billerica's by-laws are concerned Schott Solar is in compliance. If tomorrow Schott Solar were out of compliance it would be a new case.

Mr. Davies stated out of compliance for us would be if the droning noise returned regardless of its level. If the noise is annoying to that many people then we have a legitimate complaint. Even if the tests state that they are in compliance. That is why I would like to keep the case open to make sure the current level of the droning noise stays the same.

Mr. Kinney stated at this time the Building Department has closed this case.

Mrs. O'Rourke asked if anyone has any questions. Mrs. O'Rourke asked if Schott Solar would like to make a statement.

Mr. Kenyon asked are the signatures on the petition from a certain radius around this plant.

Mr. Davies explained the signatures come from all around this area. The noise is funneled down from the natural formation of the building and the grade of the land. If you stand in Schott Solar's parking lot you can look down across the parking lot and see all the houses.

Mr. Reader asked how far away from Schott Solar do the residents live.

Mr. Davies replied about a third to a half of a mile.

Mr. Berube explained that Mr. Davies property is located approximately fifteen hundred (1500) feet away from the location of Schott Solar.

Mr. Davies stated the rest of the residents are approximately a quarter of a mile from that. It is just an unfortunate layout of the land.

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

Mr. Reader asked Mr. Kinney if he thought that what Schott Solar has done is a permanent fix.

Mr. Kinney replied yes. The Director of Schott Solar has taken steps to monitor the levels. They purchased and installed a sound meter to monitor the levels. They want to be in compliance and stay in compliance.

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

Mr. Berube explained that he has reviewed and discussed this case on numerous occasions with Mr. Kinney. I have been to the site a few times. Schott Solar has been proactive and had a number of studies done over the years to show that they comply with the local regulations. They have taken it a step further by installing silencers on the dust collectors to further reduce the sound. They have taken this problem very seriously and addressed the issue and tried to be a good neighbor. I have discussed this matter with Schott Solar and they informed me that this is part of their regular maintenance. They routinely check the sound level to see if adjustments are needed. If adjustments are needed they make them. I don't see the need to keep this case open. When Mr. Davies mentioned the term continuous noise that is one of the criteria's for a violation. If the noise was not continuous and it was an intermittent noise then we would not consider it a violation of the by-law. At this point there is nothing left to do and the case should be closed. If down the road Mr. Davies feels that there is a problem, then he can file a new complaint and we will look at the situation again. It could be that something went wrong and they repaired it. At that time we can revisit the problem. There is no reason to keep this complaint open.

Mrs. O'Rourke asked the Board Members if they agree with Mr. Berube.

The Board Members agreed that there is no reason to keep this complaint open.

Mrs. Giroux made a motion to close the noise complaint filed against RWE Schott Solar and therefore no further action is required by the Board of Health.

Mr. Kane seconded. So voted unanimously.

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

The Board adjourned at 8: 35 p.m.

Respectfully submitted,

Sandra Giroux
Secretary

Joanne M. White
Recording Clerk