

**BOARD OF HEALTH MINUTES**  
**January 7, 2013**

Marie O'Rourke, Chair, called the meeting to order at 7:00 p.m. Also in attendance were Sandra Giroux, Secretary, Daniel Kane, Mike Grady, Richard Berube, Director and Joanne White, Recording Clerk. Robert Reader, Vice Chair was absent.

**ACCEPTANCE OF MINUTES**

Mrs. Giroux made a motion to accept the Meeting Minutes of December 3, 2012. Mr. Kane seconded. So voted unanimously.

**BOARD OF HEALTH BUSINESS**

**Health Department Activity Reports**

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

Copies of the Health Department Activity Reports for the month of December have been included in the Boards package.

Mrs. O'Rourke stated the first report is from the Public Health Nurse, Christine West.

Mr. Berube explained that Christine has included several articles about the flu season. The flu season is off to its earliest start in nearly a decade. Christine has flu vaccine available for anyone that has not received a flu shot. If anyone is interested they can contact Christine West at 978-671-0932 to schedule an appointment. Pertussis is also a concern this year. Anyone that would like to receive the Tdap vaccine can contact Christine West for an appointment.

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Mrs. O'Rourke suggested that Christine put some information on the Town of Billerica's website and on BATV to let the residents know that the Health Department has vaccine available.

Mrs. O'Rourke asked the Board Members if they had any questions regarding Christine West's report.

The Board Members did not have any questions.

Mrs. O'Rourke stated the next activity report is from Health Agent, Phavy Pheng.

Mr. Berube explained that 78 Pinedale Avenue has submitted plans to the Department of Public Works Town Engineer to review the sewer connection. The probate matter is still ongoing. Orders have been sent to the two other parties claiming ownership in the probate matter. This case will not be resolved until the probate matter is settled.

Mr. Berube explained that the court case at 16R Radcliff Road has been dismissed. The property has been sold and the new owner has obtained a permit to renovate the dwelling and correct all the violations.

Mr. Berube explained that a Show Cause Hearing was held on January 2, 2013 regarding the junk and debris at 2 Carmena Road. The progress has been very slow. The property looks like a junk yard.

Mrs. O'Rourke explained that Mr. Bursey came to see her about the complaint so I visited the property. Mrs. O'Rourke agreed with Phavy that the property is a disgrace and looks like a junkyard.

Mr. Berube explained that Mr. Bursey has been given sufficient time, at his request to clean up the property. He has not followed through with the cleanup.

Mr. Berube explained that a Show Cause Hearing was held on January 2, 2013 regarding the property at 10 Garrison Street. The roof has been fixed however the water damage inside the house has not been repaired.

Mr. Berube explained that the junk and debris at 23 Grove Street has been cleaned up. The piles of brush will be burned in the brush burning season.

Mr. Berube explained that there have been no new noise complaints from Empire Recycling.

Mr. Berube explained that the Police Department contacted Phavy about an abandoned property at 16 Ravine Road. The house has been vandalized. A letter was sent to the owner's daughter.

Mr. Berube asked the Board Members if they had any questions regarding Phavy's report.

The Board Members did not have any questions.

Mr. Berube stated the last report is from Health Agent, Gary Courtemanche.

Mr. Berube explained that Gary has been busy with inspections and re-inspections of the food service establishments. Gary conducted a food plan review for Via Dell Amore, 749 Boston Road. As you recall the Board approved the food service establishment in the flood plain.

Mr. Berube explained that Pizza Mia is expanding their food establishment. They have also acquired a liquor license. Plans have been submitted for review of an exterior grease trap.

Mr. Berube stated that Gary also reviewed and approved the food plan for the Dunkin Donuts and Convenient Store to be located at 1 Republic Road.

Mr. Berube explained that Gary received a complaint regarding possible wetlands and flood plain violations at 6 Sesame Street. Gary investigated the complaint along with Isabel Tourkantonis and found the homeowner had leveled the back yard and reseeded the lawn. No violations were observed.

Mr. Berube stated that the Health Department received a complaint from Rose Hill Manor regarding trash and debris scattered behind the Billerica Mall. Gary investigated the complaint and found that the trash and debris were from the Subway food establishment in the Billerica Mall. A written warning was issued to the store owner and informed them that any future violations would result in a fine. Gary is working with mall management to clean up behind the mall and install a fence.

Mr. Berube stated that Gary closed the Pongal Restaurant as a result of unsanitary conditions when he was conducting a routine inspection.

Mr. Grady asked has the restaurant reopened.

Mr. Berube replied they were only closed for that day. An Administrative Enforcement Conference was held on December 13th in the Board of Health office to ensure that a plan for corrective action be instituted. An approved Food Safety Consultant will be required for a period of 12 months during which time a series of bi-monthly inspections will be held and the results will be forwarded to the Board of Health office for review. In addition, a professional cleaning company has been hired to provide intensive cleaning once per week. The restaurant was fined three hundred (300) dollars for failure to maintain the establishment. The fine has been paid.

Mrs. O'Rourke asked the Board Members if they had any questions regarding Gary Courtemanche's report.

The Board Members did not have any questions.

Mrs. O'Rourke asked what is the status of the OM temple.

Mr. Berube replied that he does not have an update at this time.

Mr. Berube explained that he has sent a memo to the Board of Appeal regarding the old Cove Restaurant, 265 Boston Road. It has been purchased by Fucheng Catering Co. The establishment is proposing a high end Asian Restaurant. The owners will be appearing before the Board of Appeal. The Board of Health will go through the establishment with the new owners to make sure all the work that is being done is up to code.

Mr. Grady asked Mr. Berube if he would explain the letter that he received regarding the improper disposal of dog waste down the sewer system.

Mr. Berube explained that the Health Department received a complaint from the Highway Department regarding dog waste being dumped down the catch basins in the neighborhood of Freddy and Norman Road in East Billerica. I got a list of all the pet owners in that area and sent a notice out to them requesting that they refrain from this practice. We also sent information about protecting the catch basins.

Mrs. O'Rourke asked how did this complaint come about.

Mr. Berube explained that the Highway Department was cleaning the catch basins and discovered that some of the catch basins were full of dog feces that were in plastic bags. So we sent a letter to the dog owners in that area making them aware of the situation.

**Proposed 2014 Budget**

Mrs. O'Rourke stated the next item is the Proposed 2014 Budget.

Mr. Berube explained that the budget is a level services budget. The only increase is under personnel services. This year's budget request is four thousand (4,000) dollars higher than last year.

Mrs. O'Rourke asked why.

Mr. Berube explained due to contractual obligations for personnel services.

Mrs. O'Rourke asked how many employees are going to the next step.

Mr. Berube replied no one is going to the next step. The entire staff is at top step.

Mrs. Giroux stated the budget is going down because there are no itemized expenses.

Mr. Berube stated that the budget is the same as last year. The expenses are level funded. Mr. Berube explained that there is an error in the formula for transferring the expenses. The total expenses of \$12,471.00 will be included in the final budget.

Mrs. Giroux made a motion to accept the proposed 2014 budget with the expenses included.

Mr. Kane seconded. So voted unanimously.

**Medical Marijuana FAQ**

Mrs. O'Rourke stated the next item is the Medical Marijuana FAQ. Mrs. O'Rourke explained that she asked the Director of Public Health, Richard Berube if the Board of Health will be involved with Medical Marijuana. Mr. Berube informed me that he has already spoken to the Town Manager, John Curran and Police Chief, Dan Rosa regarding this matter.

Mr. Berube explained that a Frequently Asked Questions and answers sheet regarding Medical Marijuana from the Department of Public Health (DPH) is included in the Boards package. The DPH is in the process of developing regulations for Medical Marijuana. The news media has advertised that some communities have passed regulations to ban these treatment centers in their towns. However, I do not know whether that will pass legal review. I have met with the Town Manager, the Police Chief and the Director of Planning to discuss the legal aspects of this matter. I have also been doing some research on this subject. Locally, Rhode Island and Vermont have passed regulations for Medical Marijuana. We are looking at what is going on in the western part of the country. I will keep the Board apprised of any new developments. I am sure that in the near future the Board of Health will be promulgating regulations for Billerica. The Board of Health will be the most effective board in regulating Medical Marijuana.

Martha Moss, 8 Philip Road, Billerica identified herself. Ms. Ross asked does this mean that Billerica will not be helping people that have cancer.

Mrs. O'Rourke replied that is not what was said.

Mr. Grady explained that the Board was discussing the position Billerica would take in regards to a dispensary for medical marijuana to be sold.

Ms. Moss stated it has to be sold somewhere.

Mr. Berube explained there are no answers at this time. We are waiting to hear from the DPH regarding the regulations. As mentioned before some communities have passed bans. There has to be five (5) of these treatment centers located in Middlesex County. At this time we do not know where the treatment centers will be located. There is a concern about the location of the treatment centers. We are looking at all the information that is available at this time.

Mrs. Giroux asked do we have to write something to the Zoning Board of Appeal to work in conjunction with them.

Mr. Berube replied at the meeting with the Town Manager we discussed zoning regulations. It is has to be a multi-prong approach.

Mr. Grady commented that in Reading and Wakefield the Board of Selectmen has instructed their Town Managers to notify the State that they do not want a facility in their town.

Mr. Berube replied that he does not know whether or not that will stand up in a legal review.

Mr. Kane commented that it is up to the Board of Health for the regulations and the design structure. It is up to the Zoning Board to decide what types of businesses would be allowed and where they would be located.

**600/800 Iron Horse Park**

Mrs. O'Rourke stated the last item under Board of Health Business is 600/800 Iron Horse Park.

Mr. Berube explained that this matter is about the Massachusetts Contingency Plan (MCP) status at 600/800 Iron Horse Park, involving McFarland-Cascade and Eastern Terminals. Included in the Boards package is a copy of a letter from GZA requesting that the Health Department close out the files on this matter. Mr. Berube explained that there is an e-mail from the Mass Department of Environmental Protection (DEP) explaining the status of the Eastern Terminals site. I wanted to bring this to the Board's attention to see how you wanted to handle this. Mr. Berube suggested that the Board request that McFarland-Cascade and Eastern Terminals come back before the Board for a public hearing and give a full comprehensive report on what has been done at the site.

Mrs. O'Rourke agreed that they should come back before the Board

Mrs. Giroux stated that the residents should also be notified about the hearing.

Mr. Berube stated that we owe an explanation to all the residents in that area what has been done at 600/800 Iron Horse Park. What they achieved is a temporary solution. Anyone that is interested in purchasing that property is going to be responsible for filing with MassDEP under the Massachusetts Contingency Plan.

Mr. Berube explained that in July 2009 he assisted the Environmental Protection Agency (EPA) in conducting soil sampling at several properties surrounding Iron Horse Park. They were looking to determine if asbestos from Iron Horse Park had migrated into the surrounding neighborhoods. No asbestos was detected in the properties that were tested. We sampled residential properties on High Street, Burnham Road and Pond Street.

Mrs. Giroux suggested that Mr. Berube inform the residents at the public hearing about the asbestos sampling. Mrs. Giroux asked Mr. Berube when he planned on scheduling the public hearing for Iron Horse Park.

Mr. Berube asked the Board if they wanted him to invite McFarland-Cascade, Eastern Terminals and the residents to the February 11th or March 4th meeting.

Mrs. O'Rourke and Mrs. Giroux agreed to the March 4, 2013 meeting.

Mr. Berube stated that the former Deputy Director of the Billerica Board of Health, Jay Walsh passed away. Jay used to be the Deputy Director in Billerica during the early 1990's. Jay was a big asset to the Billerica Board of Health.

**7:15 p.m. Kevin Phelan – 45 Woodlawn Avenue – Request a Variance for work within 25 feet of the Flood Plain**

Mrs. O'Rourke stated the next item on the agenda is Kevin Phelan, 45 Woodlawn Avenue, requesting a Variance for work within 25 feet of the Flood Plain.

Kevin Phelan provided the Board with a copy of the plot plan for the proposed addition at 45 Woodlawn Avenue.

Kevin Phelan, 45 Woodlawn Avenue, Billerica, identified himself. Mr. Phelan explained that he purchased his home approximately eight (8) years ago and now have four (4) children. The house is approximately 1500 square feet and is too small. We are proposing to construct an addition next to my house and attach it to my existing house. I wanted to construct the addition out back however my back yard is in the flood plain. I am proposing to build the addition on the other side of my house which is on higher ground and is not in the flood plain. I have highlighted the proposed addition on the plot plan.

Mrs. O'Rourke asked how come you did not build a second floor on the existing house.

Mr. Phelan replied that originally I wanted to do that but because half of my house is built on pressure treated wood and half is built on a foundation I would have to get a variance from the Board of Appeals. It was too costly to fortify the existing structure. The next best thing was to build next to and attach it to the existing house.

Mrs. O'Rourke asked how are you going to attach the proposed addition to the existing house.

Mr. Phelan explained that where the existing side porch is there will be a staircase attaching the proposed addition to the existing house.

Mrs. Giroux asked will the connection be covered.

Mr. Phelan explained that it will be like a breezeway.

Mrs. O'Rourke asked will the proposed addition be considered another house.

Mr. Berube replied no.

Brian Syring, Syring Building Services, identified himself. Mr. Syring pointed to the plans and explained that there will be a mudroom with a shared wall and a staircase.

Mrs. Giroux asked Mr. Phelan if he was connected to town sewer.

Mr. Phelan replied that he was connected to town sewer. I was told that in 2014 the streets were going to be paved.

Mr. Berube explained that Mr. Phelan came to the Board of Health office a year ago because of this flood plain. I had a discussion with the Town Engineer and they told me that within the next couple of years they were going to try to improve the drainage in this area. The drainage improvements might mitigate this isolated pocket of flood plain. This isolated pocket of flood plain is primarily on his property and he gets all the water from the neighborhood. Mr. Berube took some pictures for the Board to review and explained that there is a huge depression to the left side of the house that is where the flood plain is located. He is building on the other side of this house. There will not be any alterations to the flood plain. It should not affect any drainage in the neighborhood.

Mrs. O'Rourke asked Mr. Phelan if he has ever come before the Board of Health before.

Mr. Phelan replied that he has only appeared before the Board of Appeals.

Mrs. O'Rourke asked will the addition be constructed on stilts.

Mr. Berube explained there is no flood plain on that side of the house.

Mrs. O'Rourke asked will there be a full foundation.

Mr. Phelan replied yes, there will be a full concrete foundation.

Mrs. Giroux asked will there be a full basement or a crawl space.

Mr. Phelan replied there will be a full basement.

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

Mr. Kane asked does the flood plain run through the house.

Mr. Berube explained that the flood plain wraps around the house.

Mr. Kane asked is the house in the flood plain. Is the point of this addition at the flood plain line?

Mr. Berube replied no.



Mr. Kane asked is the flood plain on the left side or the right side of the house.

Mr. Berube explained that the flood plain runs along the north and westerly side of the house. The opposite side of where he is constructing the addition.

Mr. Kane asked is the low point at the point of the addition.

Mr. Berube replied no, and pointed to the low point.

Mrs. O'Rourke asked Mr. Phelan if he gets water in his basement.

Mr. Phelan replied that he has had water once in the eight (8) years since he has been there. I get water in my yard because of the catch basin across the street. When the sewers were installed they were not done properly.

Mr. Berube pointed to the plan and explained that it is an isolated pocket of flood plain and the green line represents the boundaries of the flood plain.

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

Mr. Berube replied 16,200 square feet.

Mr. Kane stated that the full foundation will be very close to the flood plain. Going with a full foundation will decrease compensation as opposed to a slab or something else to minimize the displacement of water. I am concerned with the flood plain mitigation. If it is not in the flood plain it is within inches of the flood plain. Mr. Kane commented that going with the full foundation will decrease flood storage rather than minimize the impact.

Mr. Phelan replied that he has never had water.

Mr. Kane stated but there is water. If there is water on the back of the house then there is water on that side as well. If a foundation is constructed eight (8) feet deep then a lot of water is being displaced out of the ground when it floods.

Mr. Berube explained that flood plain is an isolated pocket and is actually a huge depression. It is hard to tell from the pictures that I have taken but it probably drops about eight (8) feet.

Mr. Phelan explained that his neighbor who lives behind him told him that his back yard used to be a pig farm. Where the retaining wall is located used to be a pen that was never filled in. I am not getting water from the neighborhood. The water that I get is because I am at a lower point. My yard was never filled in. That is why I went to the other side of the house because it is not in the flood plain.

Mrs. O'Rourke asked Mr. Berube if the Green Engineering Flood Plain map is wrong.

Mr. Berube replied it is questionable whether or not this is true flood plain. It is an isolated pocket. It is more indicative of drainage issues in the neighborhood than flood plain.

Mr. Phelan explained that the Engineering Department told me that in 2014 they are going to put in a new drain because there is a catch basin across the street from my house that floods. When it floods the water comes into my yard. They told me the new drain will be put in before they pave the street.

Mrs. Giroux asked how far is the proposed addition from the existing flood plain.

Mr. Phelan replied 14-15 feet.

Mrs. Giroux asked is there any discussion about having a French drain installed around this property.

Mr. Phelan replied that he would not be opposed to doing that.

Mr. Berube explained that a French drain would not do any good because the water table is deep. Mr. Berube recommended that infiltration units for roof runoff would be more effective.

Mr. Phelan replied that he would not be opposed to anything that the Board thinks he should do.

Mrs. Giroux asked have you ever had water.

Mr. Phelan explained that he had a small amount of water once and that was his fault. The drain spout was pointed the wrong way and the water collected there.

Mrs. O'Rourke asked do you have a sump pump in your basement.

Mr. Phelan replied no. I have a wet vacuum that is ready to go. I have used the wet vacuum once in nine (9) years.

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

Martha Moss, 8 Philip Road, identified herself. Ms. Moss stated she does not have any objection to Mr. Phelan constructing an addition. However, my property abuts his property and every spring my backyard gets flooded from the water draining off Mr. Phelan's property. I can't afford to have my land get any more water. Do you want to pay my flood insurance for the rest of my life?

Mr. Phelan replied that he has never had to purchase flood insurance. I have never been flooded and I am the lowest point in the neighborhood. I don't know how my water floods your yard.

Ms. Moss stated that the water from Mr. Phelan's property drains onto her property and her neighbor's property. I don't know how it happens but it does. The low point in your yard drains into my yard.

Mr. Phelan replied that is impossible.

Ms. Moss stated I am not for Mr. Phelan constructing this addition. If you want to do anything else, I will help you but I do not want you to construct an addition and extend it from your existing house. Every year the back of my yard is flooded.

Mr. Grady asked does the water come into your house.

Ms. Moss replied three times the water has come into my house.

Mr. Berube stated that the isolated pocket extends into her back yard.

Ms. Moss explained that when she connected to town sewer she had two (2) feet more water in her back yard than anyone else in the neighborhood. That is not because of Mr. Phelan there is just a lot of water in my area. I just don't need any more water. Do you want to buy me out? Be my guest. I just can't afford any more water in my yard.

Mrs. O'Rourke asked how many houses in that neighborhood get water.

Ms. Moss replied three (3) houses that I know of. One is next door to me.

Mrs. O'Rourke asked are any of the abutters present.

Ms. Moss replied that she has no idea. Ms. Moss stated that she knows what it is like to raise four (4) children. I can understand that he needs more room. If he wants to go up or go the other way, I don't have any problem with that.

Mr. Phelan replied I am going the opposite way.

Mrs. O'Rourke asked have you seen the plan.

Mrs. Giroux asked Ms. Moss where her house is located.

Ms. Moss pointed to her property on the plan.

Mrs. O'Rourke stated the addition is close to her property.

Ms. Moss stated I don't have any objection to the addition. I am concerned because in the spring I get water that you can swim in my back yard.

Mr. Phelan stated that he does not understand how Ms. Moss can get water from his property.

Mr. Berube explained that Ms. Moss's situation is not going to change. What Mr. Phelan is doing is not going to make that situation any worse than what it is.

Ms. Moss stated if you build in that area it is going to affect the water.

Mr. Berube explained that he is not altering the drainage in that area.

Mrs. O'Rourke stated he is taking land that is vacant and absorbing water and putting a structure on it. That water has to go somewhere.

Mr. Berube explained that is why he is installing roof drainage and that should take care of it.

Ms. Moss stated that it is a nice plan but it doesn't always work. There has to be another way to do this. Somebody from the town is going to be sitting with me in my back yard in the spring time and help me bail out water. I have already dealt with another Board in this town. My memories of this Board are not kind.

Mrs. O'Rourke asked are you referring to this particular Board.

Ms. Moss replied the Board that Tony the electrician is on.

Mrs. O'Rourke stated Tony was never on this Board you must be referring to the Building Department.

Ms. Moss told the Board a story about a problem she had with the Building Department and Tony the electrician.

Mrs. O'Rourke stated that does not have anything to do with the Board of Health.

Ms. Moss stated that she had to come before the Board in this room. I also went to see the Town Manager. My memories at the Town Hall are not kind. Please build your house anyway you want but please protect my property. That is all I have to say. Don't flood me out. Good night.

Mr. Berube stated that he recommends granting the variance. There is no activity taking place in the flood plain. Mr. Phelan is not doing anything to alter the flood plain. The Board can make it a condition that he has to install infiltration units for roof runoff to address any issues as far as any additional impervious area.

Mrs. O'Rourke asked is there any chance that you can put this addition someplace else.

Mr. Phelan replied this is the only place the addition can go.

Mr. Berube reiterated this is the only place the addition can go.

Mr. Phelan explained that he is not requesting a variance to get closer to the setbacks. I am staying within the setbacks. I don't understand what she is trying to say because my yard is the lowest point. The water comes into my yard. Anyone can come to my property and see that.

Mr. Berube stated that he guarantees that Mr. Phelan gets the worst of the water situation.

Mr. Grady asked is there a non-porous driveway to mitigate the water.

Mr. Phelan replied that the driveway is on the other side.

Mrs. Giroux asked is there any way you can add vegetation.

Mr. Berube explained that he is not altering the flood plain.

Mr. Phelan asked Mrs. Giroux what she meant by adding vegetation.

Mrs. Giroux explained that be adding vegetation it would make the neighbors happy.

Mr. Berube recommended that the Board make a condition that he installs infiltration units for the roof runoff. That would take care of the additional impervious area that he is creating. There is no alteration to the flood plain. I talked to the Town Engineer and the plan is to do some drainage work in that area in the next couple of years. That would help some of the concerns of the neighbor, Martha Moss.

Mr. Phelan stated that Ms. Moss lives two streets away. The next street is Rosewood Avenue.

The Board Members looked at a map and Philip Road is two (2) streets away.

Mrs. O'Rourke commented that she sympathizes with anyone that has water on their property.

Mr. Grady asked if Mr. Berube could explain how someone two (2) streets away is responsible for the flooding that goes on.

Mr. Phelan stated that Ms. Moss does not abut my property.

A discussion was held about Ms. Moss's property abutting Mr. Phelan's property.

Mrs. O'Rourke asked if any other 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) in order to construct an addition within twenty-five (25) feet of the Flood Plain at 45 Woodlawn Avenue 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) The applicant proposes to construct an addition to the existing single family dwelling. The existing dwelling is serviced by town water and sewer. The site does not fall within the FEMA Flood Plain. However, there is an isolated Green Engineering Flood Plain (GEFP) as delineated on the GEFP Map #37, located within twenty-five (25) feet of the proposed project. There will be no filling or work within the flood plain.
- 3) 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 25 in accordance with the Board of Health regulations and Special Conditions:

- A) All construction must be in accordance with plans submitted for review and approval, prepared by Stamski and McNary, Inc., dated November 1, 2012 and stamped by Joseph March, PLS #36384.
- B) Drainage structures shall be installed to allow for the infiltration of roof runoff from the proposed addition.

Mr. Grady seconded. So voted unanimously.

**7:25 p.m. Scott Green – 153 Nashua Road – Continued Hearing for a Variance request for work within the Flood Plain**

Mrs. O'Rourke stated the last item on the agenda is Scott Green, 153 Nashua Road, continued hearing for a Variance request for work within the Flood Plain.

Doug Lees provided the Board with a revised copy of the plans dated January 2, 2013 for 153 Nashua Road.

Doug Lees, Land Engineering and Environmental Services, Inc. identified himself. Mr. Lees explained that he is representing Scott Green the owner of the property at 153 Nashua Road. This is a continued hearing requesting a variance for work within the flood plain. A meeting was held with Richard Berube, Director of the Board of Health, Representatives from the Conservation Commission, the Department of Public Works (DPW) Engineering Department and some of the neighbors to discuss some possible changes to the plans to try to alleviate some of the concerns that were raised at the Board of Health meeting held on December 3, 2012 and the Conservation Commission meeting. Mr. Lees pointed to the plans and explained the locations of the Green Engineering Flood Plain (GEFP). In the previous plan the driveway was touching the edge of the GEFP. In the revised plan the driveway will be moved further to the northwest to remove it from the GEFP. Originally we were requesting two (2) variances. One variance was for work within the GEFP and the other was for work within twenty-five (25) feet of the GEFP. Now we are requesting only one (1) variance for work within twenty-five (25) feet of the GEFP.

Mrs. Giroux asked about the septic system.

Mr. Lee replied that the septic system has been removed from the plan. Mr. Lees pointed to the plan and explained that originally we thought the sewer system had stopped at the manhole. However, DPW went out and exposed a couple of manholes. The sewer passes in front of the site. We can get to it by gravity. However, there are a few problems. The driveway will have to be raised. Mr. Lees explained how the driveway would be raised and the sewer connection would be installed.

Mrs. O'Rourke stated so you will be able to connect to town sewer.

Mr. Lees replied we will be able to connect to sewer. It is in front of the property. We will be able to take the septic system out of the plans which will remove a lot of the disturbance. We will also remove all the water that is going back into the ground. The revised plan calls for a well. We won't be bringing water into the site we will be taking water from the site and discharging the water into the sewer system. That should lessen some of the water problems in the neighborhood.

Mrs. O'Rourke asked how come you did not come up with this plan the first time.

Mr. Lees replied that originally I went to the Engineering Department when we were doing the survey and asked for the sewer plans for that area. They showed me the plans and explained that there is no sewer plans for that area. I was under the impression that the site did not have sewer. I walked down Nashua Road and did not see any manholes. The DPW went out and found the manholes. They cut and raised the manholes. I submitted an application to the Board of Health to do test pits for a septic system. Mr. Berube told me that he thought there was sewer in that area when we were doing the test pits. We were told by the Town Engineer that there was no sewer in front of the site.

Mr. Berube explained that it took a lot of digging. The Town has poor records of the sewer connections in that area because Simmons Farm was privately sewered. The Town does not have any records or “as-built” plans for this section of the sewer line. DPW has uncovered and raised some of the manholes in that area.

Mrs. O’Rourke stated that at the last meeting I don’t think you believed Mr. Berube and this Board when they said that there was sewer in that area.

Mr. Lees stated what do you do when you cannot find any manholes and the Engineering Department gives you a plan and tells you that there isn’t any sewer in that area. Because we are taking the septic system out of the plan we can increase the buffers around the property and propose a forty (40) foot no cut zone. Mr. Lees explained that for the two (2) neighbors that are down gradient we are proposing a six (6) inch high earthen berm along the edge of the tree line and a post and rail fence. Mr. Lees pointed to the plans and explained that along the driveway there will be infiltration trenches and curbing along the wetland. The earthen berm is something that came out of the meeting with the neighbors to try to prevent as much runoff as we can.

Mrs. O’Rourke asked what is the post and rail fence going to do.

Mr. Lees explained that it is part of conservations permanent buffer along the edge of the property so that no work will be done beyond that point.

Mrs. O’Rourke stated it is serving no purpose other than aesthetics.

Mr. Lees replied it is more of a buffer for conservation.

Mr. Berube explained that on the plan it is noted that they will not do any work beyond the post and rail fence so they will preserve a lot of the trees. It will preserve more of the landscape that exists in that area. They won’t be able to cut down any more trees.

Mr. Lees pointed to the plans and explained that some of the other things we are proposing is to remove a lot of the debris that is in the wetland area. There is some piping and stuff. Whatever is not buried we are going to remove. We will not be digging up anything. We have an aggressive plan for planting shrubs. There is a big difference in this plan from the previous plan.

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

Mr. Kane asked why are you putting in a well and not going with the public water in that area.

Mr. Lees replied there are two reasons. The first reason is because of the distant to the street and having to keep the sewer and water lines ten (10) feet apart all the way down the driveway. The distance to the street is approximately six hundred (600) feet. The second reason is because of the feasibility of



trying to construct with limited disturbance when making all the bends. Everything has to be lined up just right.

Mr. Kane stated that wells are at a different level of public health protection. Public water is more closely monitored than a private well would be. Mr. Kane explained that his biggest concern is having a private well when public water is available on the street.

Mrs. Giroux stated that she is glad that they found the sewer. Mrs. Giroux stated that she would like to hear from the neighbors before she asks any questions.

Mrs. O'Rourke asked if any abutters would like to comment.

Lynn Barstow, 145 Nashua Road, identified herself. Ms. Barstow stated that the plan is better. I live next door and we have had sewer for thirteen (13) years. It is not a big surprise. I did not hear about the well. Mr. Lees make it sound like he is doing all these wonderful things but I have my reservations.

Mr. Kane asked Ms. Barstow what her reservations are. Without knowing what your reservations are the Board cannot evaluate or act on them.

Ms. Barstow stated that she does not trust Mr. Lees. Mr. Lees is acting like he has made a lot of changes. The zoning was in place thirteen (13) years ago. They changed everything by dividing the property and now he is seeking these variances. The land was divided and they knew the zoning laws that existed and now he is asking for all these changes. We all live in that area and had to abide by the rules. The way Mr. Lees makes it sound you think that the visual barrier is going to prevent more trees from being taken out. The Conservation says that this is where the visual boundary has to be. It is not like he is doing any favors by cutting down less trees. He revised the original plan. That is the regulation that you have to have a visual boundary and you can't go beyond that.

Myles Preston, 18 Luce Circle, identified himself. Mr. Preston stated that he still has a lot of reservations about the water problems. As I stated before I get water in my backyard in the spring. At the last meeting that was held with Mr. Berube, the Conservation Commission and the Highway Department I told them about the drainage pipe in my back yard. The town told me it was not theirs and never belonged to the Town. The Highway Department thinks the pipe came from that property when it was first subdivided as a relief. They have done a lot. I have drainage pipes as a relief from that property. Who do I sue when that water starts coming my way? I have never had a problem with water. I am very concerned. I don't understand how they can get a variance. You make rules and then you change them.

Mr. Lees explained that the variance is to do work within twenty-five (25) feet of the GEFP. Flood Plains are important because they provide an area for runoff to store in during the flooding events. So if people work within the flood plain it will increase the area that the flooding covers because it will be taking up the area within the flood plain. We are not proposing to do any work within the flood plain. The Billerica Board of Health regulations require that if you are doing any work within twenty-five (25)

feet of the flood plain you have to come before the Board of Health for a variance. That is not the case in other towns. It is within the Billerica Board of Health Regulations. Mr. Lees referred to the hearing before this one where they wanted to construct an addition on the opposite of the flood plain however it was within twenty-five (25) feet of the flood plain so he had to request a variance. The Board of Health wants to make sure that we are not increasing the runoff to the flood plain by working next to the flood plain and they want to make sure that we know where the flood plain boundaries are located. As for the drainage pipe, the Town Engineer was going to come out and look at it. I have not seen the pipe I don't understand what it is or where it is coming from.

Mr. Preston stated that the guy from the Highway Department seems to think that the drainage pipe may have come from that property as a relief years ago.

Mr. Berube asked Mr. Lees to explain about the earthen berm.

Mr. Lees pointed to the plans and explained that Conservation requires a fifty (50) foot barrier that we are not allowed to go beyond. We are proposing a barrier that is 70 to 100 feet in the back of the lot. Mr. Lee pointed to the section and explained that we are not going to build outside of the Conservations jurisdiction. It is a forty (40) foot buffer from the lot line which is well beyond the Conservation jurisdiction. We are providing an additional buffer and low disturbance area beyond what is required by the Conservation guidelines. Mr. Lees explained that where the post and rail fence is going to be constructed there will be an earthen berm so that any runoff from this property is going to be caught by the earthen berm and brought down towards the infiltration area into the wetland and should flow out to the culvert on Nashua Road. We have doubled the roof recharge over what was previously proposed to try to increase the infiltration from the proposed house.

Christopher Weimer, 147 Nashua Road, identified himself. Mr. Weimer stated that his house is the closest to the proposed house. I have a lot of questions regarding the Conservation Commission. A house was never supposed to be built on that property because of all the conservation land. There is a lot of wetland in that area.

Mrs. O'Rourke asked Mr. Weimer if he gets water in his basement.

Mr. Weimer replied that he does not get water. The builder installed a trench around my house to protect the neighbors a year after the house was built.

Mrs. O'Rourke stated that the builder put in a drain when he was building your home so that you did not get water.

Mr. Weimer replied the builder put the drain a year after we bought the house. I am not sure why.

Mrs. O'Rourke asked is the trench on your property.

Mr. Weimer replied yes he put pipes around my property.

Mrs. O'Rourke explained that the builder put the drain system in to prevent the water from your place going someplace else.

Mr. Lees pointed to the plans and explained the wetland area and the location of Mr. Weimer's house. Mr. Weimer is higher than the proposed house. The builder probably installed the roof recharge so that he could get the Certificate of Compliance.

Ralph Nardone, 20 Luce Circle identified himself. Mr. Nardone stated that he suffers the most because of the location of his house. I had to put in a major drainage system inside the basement because it has flooded several times. I have three pumps that are hooked up to a battery backup system. I have spent approximately \$14,000. I had to refinish my family room. I am very concerned. They have come a long way to make this plan as good as possible but it may not be good enough. The ground is just very wet. This week my pumps have been running twenty-four hours a day and there has not been any rainfall. The ground is starting to freeze and the water has no place to go and heads toward my basement. The plan has improved tremendously however I am still very concerned. We have talked with Conservation and the Highway Department about the drainage easement and how it drains out back and goes across Nashua Road and down. There has been talk about mosquito control being able to clear the path to improve the drainage. There are three eighteen (18) inch storm drain pipes that flow into the culvert from Luce Circle and there is only about an inch of that pipe that is not covered with silt.

Mr. Berube explained that a meeting was held on December 14, 2012 with Mr. Nardone and Mr. Preston, the abutters, the Conservation Commission and the Town Engineer. We discussed the concerns of the Board and the concerns of the abutters to see what improvements could be made to address the situation. The improvements are reflected on the revised plan. One of the things we discussed was to try to improve the existing drainage especially on Mr. Nardone's property. Unfortunately, there are no drain easements to allow us to go on their property (153 Nashua Road). That property is privately owned and we needed permission to go on that property. On Friday, January 11, 2013 we are going out to the site with mosquito control to see what can be done to improve the drainage flow through that area. As Mr. Nardone has stated the outlet of the drain pipe on his property is all silted in. The flow is very poor. So the water pools in his backyard. We are looking to clean that out and clear a channel through Mr. Green's property to restore the flow back to Nashua Road. That will help to effectively drain the area and not have the water pool or pond in that area.

Mrs. O'Rourke asked is there enough space on Nashua Road.

Mr. Berube explained that there is a culvert that goes underneath Nashua Road.

Mr. Nardone stated that he would like to see that done as a pre-condition.

Mr. Berube stated that he is going to meet with mosquito control on Nashua Road on Friday.

Mr. Nardone stated that he would like to see the problem fixed.

Mr. Berube replied that the Board could make that a condition of approval.

Randy Cushman, 155 Nashua Road, Billerica identified himself. Mr. Cushman explained that he does not have water in his house however water surrounds the house on three sides.

Mrs. O'Rourke asked which side is dry.

Mr. Cushman replied the side that is farthest down the road.

Mr. Berube explained that he sits on a knoll. He is on very high ground. He is much higher than anybody else in the neighbor.

Mr. Cushman explained that his first concern is that the water on three sides of his house will rise. My second concern is that the additional runoff that will flow down to Nashua Road and cross over the road will rise and freeze in the winter.

Ms. Barstow explained that the first spring after she moved into the neighborhood there was a lot of rain. We had over six (6) inches of water in our basement. We had to spend \$15,000 to have a French drain and backup pump system installed. I don't want any more water causing a problem for us.

Mrs. O'Rourke asked if there were any abutters that had any questions.

Mary Cushman, 155 Nashua Road identified herself. Ms. Cushman asked will this property have a drainage system.

Mr. Scott replied yes.

Ms. Cushman asked will it drain into the sewer system.

Mr. Berube replied no, that is a violation.

Mr. Lees replied that there will be two (2) perimeter drains. Mr. Lees pointed to the plan and explained how the perimeter drains would work.

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

Mr. Kane asked when was the property subdivided.

Mr. Lees replied approximately two (2) years ago. Mr. Lees explained that he has been working with the Conservation Commission for six (6) months.

Mr. Kane stated there has not been a lot more water from the 90's until now. Subdividing is not an easy process. I am concerned because this lot has been subdivided into this weird shape. You have made it so that you cannot get public water, the entire buildable area is well within and skirting the wetlands and significantly increased the impervious area. The Board's goal is to minimize impact to the wetlands and flood plains and minimize impact to neighbors as a result of this. It appears that there hasn't been significant insight or foresight of the impact this will have on the property in the neighborhood by trying to squeeze this house in that area.

Mr. Lees stated that he disagreed. Mr. Lees pointed to the plans and explained the one hundred (100) foot buffers from the wetland. There is an acre of land that is outside the one hundred (100) foot buffer from the wetland. There is an acre of land that is far outside the GEFP. The only squeezing that was done was is to try to get the driveway out of the wetlands and the GEFP. Mr. Lees pointed to the plans and explained the wetlands area and the GEFP. Mr. Lees explained that it has the minimum frontage. It complies will all the zoning. The house and most of the driveway is outside the wetland buffer zone. Mr. Lees pointed to and explained that there is only a little portion of the driveway that is in the buffer zone. By doing this we have minimized the impact to the environment. Mr. Lees explained that he has managed to keep the driveway outside of the GEFP and wetlands. We are within the twenty-five (25) foot buffer zone to the GEFP. We are within the fifty (50) foot buffer zone to the wetlands but outside of the wetlands. We are not allowing the runoff to go directly from the known improvements into the wetlands or into the GEFP. We are collecting the runoff with curbing or infiltrating it into the ground water. We are increasing the buffering. We are providing more than the 25, 50 or the 100 foot buffer in some instances from the wetlands and the GEFP to try to address the concerns of the neighborhood. Mr. Nardone has the worst situation in the neighborhood because portions of this property drain on to his property. The culvert is buried. Mr. Green has agreed to allow the town and mosquito control to come on to his property to try and address this situation. We tried to address it by taking all the runoff from the site on to his property and redirecting it down past Mr. Nardone's property into the wetland so that it will not backup on to Mr. Nardone's property.

Mrs. O'Rourke stated so between Conservation and the Board of Health you are doing a lot of work to be able to construct that house on that piece of property.

Mr. Lees replied yes.

Mrs. Giroux stated that she has some concerns. Billerica is known to have unbuildable lots and hard access to these lots and trying to force something into these lots. My concern is the drainage from this property to the neighbor's property. I am concerned about the drainage pipe that goes from this property to the neighbor's property that nobody seems to know about. I am concerned about the wetlands and the flood plain disturbance. I am concerned about the well. I am glad you found sewer. I would like for you to find a way to tie into the public water system versus a well. I am concerned with the property access and the shape of the driveway and the freezing and flooding. I would like for you to meet with the neighbors and try again to address more of these concerns. A lot of improvements have been made since the last meeting with the neighbors. Can more improvements be made? I am concerned with the runoff. I would like to wait until after the meeting with the Town regarding the

catch basins to see if there can be an improvement to the flow before we go forward. I don't want to increase anybody's runoff. This Board is here to make sure we don't increase the runoff. I don't want to deny this project however I want to make sure it is the best fit possible. If it takes another month to revisit this project then I would rather do that than have the neighbors sue the Town. I would like to see what the town can come up with for the drainage flow, clean the catch basins and see what is going on. I would like to continue the hearing until after the meeting with the Town and Mosquito Control. I would also like Mr. Lees to see if there is a way that the applicant can tie into town water versus a well. Is there something else you can do with the driveway?

Mr. Lee commented that the Town Engineer went out there and exposed the sewer manhole that they previously told me wasn't there.

Mrs. Giroux stated maybe there is other information that could be uncovered from somebody else. I don't want to deny Mr. Green's project but I don't want to ruin the neighbor's quality of life either.

Ms. Cushman stated that a couple of years ago we had a lot of snow. Where would all the snow from the driveway go and how would that be handled?

Mr. Lees pointed to the plans and explained the designated areas for the snow storage.

Mr. Nardone stated if the snow is piled up where would it go in the springtime.

Mr. Lees replied exactly where it goes now in the springtime.

Mr. Nardone stated that nobody is piling the snow up there now.

Mr. Lees pointed and explained that the snow would go into the wetland and be caught by the berm and the curbing and brought down to the wetland.

Mr. Nardone asked what keeps the earthen berm together. It is only a six (6) inch berm. What keeps that from washing away?

Mr. Green explained that the earthen berm is made of stone or gravel with a filter fabric over it to keep it in place.

Mr. Lees explained that once there is a lawn it will not wash away.

Mr. Nardone stated that when he was reviewing the plan he noticed that it said earthen berm detail but there was no detail.

Mr. Green replied that vegetation is the best earthen berm. Mr. Green stated that he could raise the earthen berm higher.

Mr. Lees explained that a six (6) inch berm should be sufficient to catch the runoff.

Mr. Nardone asked how do you know the six (6) berm is adequate. Do you know what the flow rate is? I am not convinced that six (6) inches of dirt is going to hold back very much for very long. I don't see anything on this plan from an engineering standpoint about the dimensions for this problem that you are trying to resolve.

Mrs. Giroux made a motion to continue the hearing until more information can be gathered to answer all the questions that the project owner and the neighbors have. Mrs. Giroux suggested that the neighbors and the applicant get together to discuss the situation. That would be my motion now versus the project being denied.

Mr. Grady seconded. So voted unanimously.

**Open Microphone**

Mrs. O'Rourke asked if anyone was present for open microphone.

No one was present for open microphone.

Mr. Kane stated that the Board receives a monthly report from the Health Agents, Phavy Pheng and Gary Courtemanche and the Public Nurse, Christine West outlining their activities. Mr. Kane requested that Richard Berube, Director provide the Board Members with an activity report outlining the day to day, week to week and month to month activity. Then the Board could advocate for the Director to the Town Manager.

Mr. Berube stated that he could do a quarterly report.

Mrs. O'Rourke asked the Board Members if a quarterly would be sufficient.

Mr. Kane reiterated that he would like a monthly report.

Mr. Grady commented that a summary would be fine.

Mr. Kane made a motion that Richard Berube, Director provide the Board Members with a high level monthly activity report.

Mr. Grady seconded. One voted in favor (Dan Kane). Three did not vote, (Mike Grady, Sandra Giroux, Marie O'Rourke). The motion was not granted.

Mrs. Giroux requested that the Director, Richard Berube continue to provide the Board Members with the Director's summary.

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

The Board adjourned at 8:50 p.m.

Respectfully submitted,

Sandra Giroux  
Secretary

Joanne M. White  
Recording Clerk