

**BOARD OF HEALTH MINUTES**  
**September 9, 2013**

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

**ACCEPTANCE OF MINUTES**

Mrs. Giroux made a motion to accept the Meeting Minutes of July 8, 2013. Mr. Grady 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 months of July and August are 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 West, the Public Health Nurse continues with her routine activities. Christine is working on a schedule for the 2013 Flu Clinics. All the summer camp inspections and the paperwork have been completed. Christine is in the process of ordering the Shingles vaccine which will be offered free of charge to Billerica residents on a first come first serve basis. Mr. Berube asked the Board Members if they had any questions regarding Christine's report.

The Board Members did not have any questions regarding Christine West's report.

Mr. Berube stated the next report is from Health Agent, Phavy Pheng.

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Mrs. O'Rourke stated that she had a question regarding 78 Pinedale Avenue. Mrs. O'Rourke stated that she thought the owner of 78 Pinedale Avenue was going to connect to town sewer however in Phavy's report she mentions that they may install a septic system. It was also brought to my attention that a gentleman who is a disabled veteran from out of state is living with them.

Mr. Berube replied that their intent is to connect to town sewer. Todd Mitchell is working towards obtaining the necessary financing from a bank to pay off his siblings. The sewer connection plans have been submitted and approved by the Town Engineer. It appears that this matter should be resolved soon.

Mr. Reader asked if the owner of 7 Woodbury Road is still living at the Homestead Suites in Burlington.

Mr. Berube replied that as far as he knows Ms. Jamison is still living there.

Mr. Reader asked who is paying for her to live there.

Mrs. O'Rourke replied her son.

Mr. Reader asked has 7 Woodbury Road been sold yet.

Mr. Berube replied no. Ms. Jamison does not want to deal with a realtor. She wants to sell the house herself.

Mrs. O'Rourke asked how much time can we give her to sell her property.

Mr. Berube replied as long as she wants. The house is boarded up and no one is living there. The Health Department cannot force her to sell.

Mr. Grady asked if Mr. Berube could give an update regarding the status of 1 Mitchell Road. Mr. Litwinsky attended the July 8, 2013 Board of Health meeting and there were several violations that needed to be taken care of.

Mr. Berube explained that there are two separate complaints for that property. All the violations have been corrected. As for the sewer connection, Mr. Litwinsky is still waiting for final approval from one of the remaining condo associations. As soon as he receives approval, the sewer connection will be completed.

Mr. Berube explained that there have not been any complaints about Empire Recycling lately. Phavy, Gary and myself have been conducting weekly inspections at the site. They have been making some improvements. We suggested to Empire Recycling that they relocate where they park their trucks.

Mrs. Giroux asked what is being done about the woman feeding the birds at the Billerica Mall.

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Mrs. O'Rourke replied that the woman is a widow that the Veterans office is assisting. I will contact her and explain to her that she cannot feed the birds.

Mrs. Giroux asked about the odor complaint coming from North Billerica.

Mr. Berube explained that this complainant lives in Lowell and calls about the odor coming from Baker Commodities all the time. Phavy has investigated the complaint and found no issues at the time of her investigation. The plant is not in operation when the complainant calls about the odor.

Mrs. O'Rourke asked about the construction of a retaining wall for a water problem at 25 Arey Street.

Mr. Berube explained that the property next to 25 Arey Street is much lower. The residents at 25 Arey Street want to construct a two (2) foot high retaining wall to level their property and slow the runoff onto the neighbor's property. I have reviewed the plans and they seem to be reasonable. The retaining wall would benefit the situation.

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

Mrs. O'Rourke stated the last report is from the Health Agent, Gary Courtemanche. Mrs. O'Rourke asked the Board Members if they had any questions regarding Gary Courtemanche's report.

Mr. Reader asked what the plan is for the old Irish American Club located at 616 Middlesex Turnpike.

Mr. Courtemanche explained that the proposal is for a Starwood Extended Stay Hotel. The property does not have enough land for a hotel so they will have to appear before the Zoning Board of Appeal (ZBA).

Mrs. O'Rourke asked Maureen about NANA Japanese Restaurant.

Maureen Lee, Food Service Solutions, identified herself. Maureen explained that NANA Japanese Restaurant is doing well. We had a meeting and identified the issues that needed to be taken care of. We have a commitment from them that they will take care of the issues. We are in the process of updating their HACCP Plan. We have identified the necessary tools that they need to get the Sushi Bar operations in order.

Mrs. O'Rourke asked what was so critical at NANA's.

Maureen replied that the protocols that are listed in the HACCP Plan are not being followed. The tools that they need are not available. The sanitizing process, cleanliness, organizing and the operation of the dishwashing machine are the problems. There were no temperature violations. The problems were mostly cleaning and sanitizing as well as the Sushi operation.

Mr. Grady asked about the work that is going on at 265 Boston Road.

Mr. Courtemanche explained that the only permit that has been issued is a demo permit so that we can see what is in between the walls to determine the extent of the mold damage.

Mr. Reader asked how long has the Cove Restaurant been closed.

Mr. Berube replied at least ten (10) years.

**Water Conservation Committee Reappointment**

Mrs. O'Rourke stated the next item is the reappointment of a Water Conservation Committee Member.

Mr. Berube explained that the Board needs to reappoint a member to the Water Conservation Committee.

Mr. Reader made a motion to reappoint Dan Kane as the Board of Health representative to the Water Conservation Committee.

Mr. Grady seconded. So voted unanimously.

**Beaver Control Bi-Annual Report**

Mrs. O'Rourke stated the next item is the Beaver Control Bi-Annual Report.

Mr. Berube explained that included in the Board's package is a copy of Beaver Solutions Site Status Report for the past six (6) months. Mass Highway cleaned out the culverts on Boston Road by Enterprise Bank in North Billerica and Beaver Solutions installed a new flow device. The water level on both sides of the road appears to be lower. Beavers were seen on Arakelian Road near Kenrick Street. Beaver Control trapped the beavers and removed the dams.

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

**Tobacco Control Update – FDA Compliance Checks**

Mrs. O'Rourke stated the next item is Tobacco Control Update and the FDA Compliance Checks.

Mr. Berube explained that included in the Board's package is an email from MHOA in regards to the FDA Compliance checks. The question arose whether or not the Board of Health could take legal enforcement action against establishments that had a violation issued by the FDA. The legal opinion from the MAHB attorney states that we cannot. I have discussed this with Ron Beauregard, Tobacco

Control Agent and we came to the conclusion that when we find out about these FDA violations we will prioritize the next compliance check at those establishments. Included is a memo from the Department of the Treasury explaining that Roll Your Own Cigarette Machines could be a tax liability. The Board passed a regulation banning these types of machines.

Mr. Kane asked if the Board can consider the FDA violation when reviewing subsequent violations for an establishment. If the FDA has found a violation against an establishment and six (6) months later our local agent finds another violation, can we consider the FDA violation as part of our level of enforcement.

Mr. Berube replied any compliance checks that the FDA conducts we cannot consider as part of our enforcement. We cannot consider it as a violation under the Board of Health Regulations.

### **Mosquito Control Update**

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

Mr. Berube explained that we are entering into the highest risk part of the season. Fortunately, we have not seen any West Nile Virus (WNV) or EEE in Billerica. There has been a report of WNV in Tewksbury and Chelmsford and a case of EEE in Tyngsborough. The residential spraying program will end when cooler night time temperatures predominate.

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

### **Animal Control Officer Retirement/Nomination of Interim Inspector of Animals**

Mrs. O'Rourke stated the next item is the Nomination of Interim Inspector of Animals.

Mr. Berube explained that Diane Murphy has retired as the Animal Control Officer. The part-time assistant Maureen Ray has offered to be the Interim Inspector of Animals. I am requesting that the Board nominate Maureen Ray as Interim Inspector of Animals.

Mrs. O'Rourke asked what will be required of Maureen.

Mr. Berube replied at this time Maureen will be on call. She will not be working full time.

Mrs. O'Rourke requested that a motion be made for the Richard Berube, Director to send Diane Murphy a Letter of Appreciation thanking her for her hard work and dedication. Diane is truly a lover of animals.

Mr. Reader made a motion for the Director of Public Health, Richard Berube to send Diane Murphy a Letter of Appreciation.

Mrs. Giroux seconded. So voted unanimously.

Mr. Reader made a motion to appoint Maureen Ray as the Interim Inspector of Animals.

Mrs. Giroux seconded. So voted unanimously.

**Proposed 2014 Board of Health Meeting Schedule**

Mrs. O'Rourke stated the next item is the proposed 2014 Board of Health Meeting Schedule.

Mr. Berube requested that the Board Members review the 2014 draft meeting schedule and if there are any issues please contact the Board of Health office. If there are no issues the calendar will be adopted at the next meeting.

Mrs. Giroux asked if the meeting time could be changed to 7:30 p.m.

A vote was taken to see if the meeting time should be changed to 7:30 p.m. The majority of the members voted to continue with starting the meeting at 7:00 p.m.

**Remote Participation Policy**

Mrs. O'Rourke stated the next item is the Remote Participation Policy.

Mr. Berube explained that included in the Boards package is a copy of the Remote Participation Policy that applies to all boards and commissions in town. If the Board does not want to follow this policy they can vote not to accept it, otherwise this policy is in effect.

Mrs. O'Rourke asked Mr. Berube to explain how this policy works.

Mr. Berube explained that if you cannot make it to a meeting you can participate by listening to the meeting by phone and send in your comments.

Mrs. Giroux made a motion that the Board does not allow Remote Participation.

Mr. Reader seconded. Four voted in favor, one voted not in favor (Dan Kane).

Mr. Kane stated that he thinks having the option is valuable because if you chose not to allow remote participation you will not have the option anymore.

Mr. Berube explained that you do not have to vote to accept it. It is already in effect. If the Board does not want to participate then you have to take a vote.

Mr. Kane stated you now have eliminated the possibility for anyone to participate on this Board remotely.

Mrs. O'Rourke asked for reconsideration and Mr. Kane to explain his proposal.

Mr. Kane explained that there are members of this Board that are not always physically local during meetings and there is a possibility of more than one member being ill. We take this Board's function seriously. If two members are not present we do not have a quorum. If someone is able to call in and serve remotely then we could function as a Board. Eliminating the possibility of remote participation could prevent this Board from not having a quorum.

A discussion was held on the pros and cons of the Remote Participation Policy.

The Board reconsidered the previous vote and unanimously voted to participate in the Remote Participation Policy.

**Zackney Estates Amended Subdivision Plan**

Mrs. O'Rourke stated the last item under Board of Health Business is Zackney Estates requesting to amend the Subdivision Plan.

George Allen provided the Board Members with a large scale drawing of the Zackney Estates proposal.

Mr. Berube explained that Mr. Allen is present to explain the project narrative.

George Allen, George Allen and Sons Construction, identified himself. Mr. Allen explained that he wants to amend Zackney Estates Subdivision and add another lot to the project. I have purchased the property at 23 Allen Road to add another lot to the subdivision.

Mrs. O'Rourke asked is the barn and house going to be demolished. There are several catch basins on the street. Across the street from this lot there appears to be a detention area. Where does the water come from that is in that detention area? Does this street have a water problem?

Mr. Allen replied that the barn and house will be demolished. I purchased this project less than a year ago. I just finished constructing three (3) houses and have not had any water problems with the houses. I was not involved with the drainage of the road for this project.

Mr. Berube explained that this project sits on a hill side and there are wetlands all around it. All that drainage is to capture the overland runoff and the street drainage.

Mrs. O'Rourke commented that the water from that property used to run onto Allen Road.

Mr. Berube replied that does not happen anymore.

Mrs. O'Rourke asked what size will the lot be when you combine them.

Mr. Allen replied 55,000 and 48,000 square feet.

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

The Board Members did not have any questions.

Mr. Berube explained that Mr. Allen wants to amend the original subdivision project and add one additional lot. There will be no adverse impact on what the Board has already approved for this subdivision. All the conditions of the original subdivision will still apply. Mr. Allen will provide drainage onsite for these proposed houses. I do not have any problem with approving the amendment.

Mr. Reader made a motion to amend the Zachney Estates Subdivision Project as presented by George Allen.

Mrs. Giroux seconded. So voted unanimously.

**7:15 p.m. Pongal Restaurant – 786 Boston Road – Show Cause Hearing for Permit Revocation**

Mrs. O'Rourke stated the next item on the agenda is Pongal Restaurant, 768 Boston Road, Show Cause Hearing for Permit Revocation.

Mr. Berube explained that Health Agent, Gary Courtemanche is present to give his report.

Mr. Courtemanche explained that he did a chronology of the inspections that he has done at the Pongal Restaurant since he has been employed with the Town. I have also reviewed inspection reports dating back to March 29, 2010 which my predecessor had done. Until recently things were not very good. There have been numerous code violations, some were very serious. We instituted some punitive measures to get things corrected which did not work out. An Enforcement Conference was scheduled in 2012. The previous owner came to the Enforcement Conference and at that time he told me the restaurant was being sold. I informed him that these measures would carry over to the new owners. Part of the condition of the original enforcement was that they would sign a contract with a Food Service Consultant, which they did. However they did not follow up with her. They did make some improvements. When the new owners took over in March 2013 I conducted a routine inspection four (4) months later and there were seven (7) critical violations and three (3) non-critical violations. A critical violation could lead to a food borne illness. I immediately closed the restaurant with that many violations. I conducted a re-inspection the next day. I discussed this matter with Richard Berube, Director of Public Health and a second Enforcement Conference within a one (1) year period is not standard protocol but the change in ownership was a determining factor. So I allowed the Pongal Restaurant to reopen pending an order to attend an Enforcement Conference on August 7, 2013. No one



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from the Pongal Restaurant attended the Enforcement Conference. I then closed the restaurant. Mr. Berube allowed them to reopen however they would have to appear before the Board for a Show Cause Hearing for the revocation of their permit. I recommended that they sign a contract with a food safety consultant. That day they signed a twelve (12) month contract with Maureen Lee. They started the process and have made some major improvements since the end of July. Since they have made some major improvements I am requesting that the Board suspend their license for seven (7) days instead of revoking their license. There has to be some action taken for not attending the Enforcement Conference and the continual violations being made.

Mr. Berube stated that Gary has taken a number of pictures for the Board to review.

Mrs. O'Rourke asked why someone from the Pongal Restaurant didn't attend the Enforcement Conference held in August.

Thirumal Thanigaivelan, one of the owners of the Pongal Restaurant, identified himself. Mr. Thanigaivelan apologized for not attending the Enforcement Conference. Mr. Thanigaivelan explained that Sekar, my partner along with my manager signed the paper. Then Sekar had to go to India to attend to family matters. There was a lack of communication to me about the meeting. The manager came in late that day and that is why he did not attend the meeting. The manager has been spoken to about this matter.

Mrs. O'Rourke stated someone could have called the office. That is unacceptable.

Mr. Thanigaivelan agreed that someone should have called. We are planning on hiring a new manager. We are communicating with Gary and Maureen. We feel ashamed because we did not attend the meeting or call. We had to shut down and lose business. We bought the business because of the Pongal's history. We were steady customers of the Pongal. We bought this place in March 2013 and we were not aware of the earlier agreement to fix things. We were not aware that there were problems that would be affecting our business. That was not in our P&S agreement.

Mrs. O'Rourke stated when you bought the business didn't you check to see what was going on.

Mr. Thanigaivelan replied we did not know about the clause in the Purchase and Sales agreement that the new owners would be responsible and needed to address these problems. Maureen has been working with us. We are working to fix the problems and make the necessary improvements.

Mrs. O'Rourke asked how many of the violations have been taken care of.

Mr. Courtemanche replied all of the critical violations. Maureen Lee is present to explain what they are going to do to address the problems. Maureen suggested that a shed be put out back. Maureen and I discussed her idea. The shed would help improve the limited space that is inside the establishment. Any restaurant that has critical violations when I inspect them, like what I found at the Pongal Restaurant on July 23, I would have closed them immediately.

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Maureen Lee, Food Safety Solutions, identified herself. Ms. Lee explained that she worked with the previous owners of the Pongal Restaurant. I was contacted by the new owners a couple of months ago. They have signed a contract. The number of processes they have going on in the kitchen is very difficult for them to do properly with the amount of space that they have. Immediately the staff and the owners have made themselves available to meet with me and come up with some solutions. Part of the plan is to move some of the dry goods to the basement area that will relieve a lot of the space upstairs in the dishwashing area. A lot of the violations come from the cleaning and sanitizing methods and procedures. They do not have the space to execute what they have to execute properly.

Mrs. O'Rourke asked is the basement dry.

Ms. Lee replied the basement is dry.

Mr. Courtemanche explained that they have installed a new sump pump. They are also going to raise the supplies twenty-four (24) inches off the floor.

Ms. Lee explained the area that they are going to use for storage has finished walls, floors and ceilings. We are waiting for approval from the Building Department to put a shed outside. Chemicals and unopened paper goods such as paper towels and toilet paper will be stored in the shed. We are re-organizing some of the areas and moving some of the equipment. The staff has been working with me and they have been very cooperative and available to me. The staff is going through food safety training. A manager's certification class is scheduled for six (6) staff employees to attend. That will help tremendously. Ms. Lee provided pictures of the Health and Sanitation Improvements that have been made. I work with a lot of clients and sometimes I have to create the tools such as cleaning schedules and opening check lists for their establishments. In this case, the Pongal has been creating their own tools and giving them to me to tweak or point out things that should be included. That is important to me.

Mrs. O'Rourke stated that the pictures Ms. Lee gave the Board show an improvement over the pictures that were taken by Gary.

Mr. Berube stated so the current ownership is being more proactive.

Ms. Lee replied very much so. I will forward the cleaning schedules and opening and closing procedures that they have developed. Ms. Lee explained that most of the time she creates those tools for an establishment. The Pongal is taking the lead and creating the tools to make the improvements necessary.

Mrs. O'Rourke stated do they understand that this has to be done constantly. It is not for three (3) months and then slip back.

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Ms. Lee replied it is noted in the schedule that this has been a violation in the past please make sure you pay extra attention to this area this is critical for food safety. The staff is very much aware of the schedule that they need to follow. There has been a change in management in the establishment.

Mr. Kane asked when did that happen.

Mr. Thanigaivelan explained in March 2013.

Mr. Courtemanche stated that did not happen.

Mr. Thanigaivelan explained that there was a new manager but the old manager came back. When we bought this restaurant part of the proposal was that the staff remained the same because we were new to this system. The ownership changed but the staff was the same.

Mrs. Giroux stated so the same manager that was there in February was there after March.

Mr. Thanigaivelan replied that he came back in May 2013.

Mrs. Giroux commented that he knew the problems, the violations and the history and the situation did not improve.

Mr. Thanigaivelan replied we are addressing that problem.

Mr. Berube asked is that manager still working there.

Mr. Thanigaivelan explained that we are in the process of hiring a new manager.

Mr. Kane stated so the manager that knew of the seven (7) critical violations is still working there.

Mr. Thanigaivelan explained that we have taken a lot of the responsibilities away from him. The chief chef has more of the responsibilities.

Mr. Kane asked are you conducting daily supervision.

Mr. Thanigaivelan replied yes. I live in North Andover. I work in Gloucester and after work I go to the Pongal every evening.

Ms. Lee explained that the restaurant opens at 11 a.m. The majority of their business is in the evening.

Mr. Kane asked are you there every evening when the restaurant is the busiest.

Mr. Thanigaivelan replied yes, he goes there right after work.

Mrs. Giroux asked Mr. Karuppanan how long he has been there.

Mr. Karuppanan replied that he is there every day.

Mrs. Giroux asked Mr. Karuppanan if he works there.

Mr. Karuppanan replied that he does not work there he is part owner.

Ms. Lee explained that in the two (2) months that I have been there the front line manager has taken a secondary role and the chef is my contact person. The chef is the person in charge (PIC) of the kitchen activities.

Mr. Courtemanche explained that part of the most critical violation is knowledge. When I conduct an inspection I always ask questions to see if they know about temperatures. When I conducted my inspection in July, the chef could not answer any questions. When I conducted an inspection on Friday, September 6, 2013 he knew all the answers. He gets it now.

Mr. Berube stated the owners have taken a more active role in the operations and are not relying as much upon the manager. You will be hiring a new manager to keep things on track.

Mr. Kane asked while you are waiting for the shed to be constructed, what beyond this plan are you doing to make sure safety exists for the customers until the space issue has been resolved.

Ms. Lee explained that the product that was stored in the basement will be stored in the shed. We temporarily relocated the paper goods and cut down on inventory in that area so that the dry goods can be moved down in the basement. That area in the kitchen has been cleared so that proper processes can take place. Last week we spent time on the proper flow so that there is a staging area for soil, a proper staging and drying area for cleaning and sinks that are set up with washer and sanitizer. The staff knows how to test the solution. I asked the staff to show me how to set up the staging areas and sanitize properly. They knew the flow so the flow worked.

Mrs. Giroux stated on July 24 you had critical errors. I am looking at the cleaning schedule and everything is checked off. How could there be critical errors if everything is checked off as satisfactory?

Mr. Thanigaivelan explained that there is a gap in the way the staff cleans, keeps records and how it is controlled.

Ms. Lee explained how she taught the staff to properly clean the tables.

Mrs. Giroux stated that is good when they are being trained but what happens when you are not there and the restaurant is busy.

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Mr. Thanigaivelan explained that the new chef will make sure everything is clean and the specifications are followed.

Mr. Grady asked the owners if they have had any experience in owning or running a restaurant.

Mr. Thanigaivelan replied no.

Mrs. Giroux asked Mr. Berube what the Boards options are.

Mr. Berube explained that if the Board feels that there is no hope, as in the case like the Cove Restaurant you can revoke their permit. If you think they have made a sincere effort in making improvements to the restaurant then I would recommend the suspension and follow Gary's recommendations in his report.

Mrs. Giroux asked how long of a suspension are we looking at.

Mr. Berube replied seven (7) days.

Mr. Courtemanche suggested that if the Board decides to suspend the permit that the time of the suspension is left up to the discretion of the Director so that it will be in conjunction with the building permit for the shed.

Mrs. Giroux made a motion to suspend the Food Service License for the Pongal Restaurant for seven (7) days in conjunction with the building permit approval for the shed.

Mr. Thanigaivelan stated that if the object of this suspension is supposed to send us a message as to how critical it is and what we need to do, I think we are very sincere about doing the right thing. The suspension will bring more of a loss to our business. We did not get our liquor license until early August and have already lost some of our customers. The seven (7) day suspension is going to be a huge problem for us. I would be willing to have more inspections and have Maureen send the Board of Health a report and spend more time with us. We are in the process of making many changes and fixing things.

Mr. Reader made a motion to amend the suspension to four (4) days instead of seven (7).

Mr. Grady stated that if the violations continue then the suspension will be held to the seven (7) days.

Mr. Reader stated if the violations continue then the license would be revoked.

Mr. Berube explained that the Board can suspend the food service establishment license for seven (7) days and hold in abeyance three (3) days and leave it up to the Director, Richard Berube that if improvements have not been made then we can implement the remaining three (3) days. If the violations continue and improvements have not been made then this matter will be presented before the Board.

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Mrs. Giroux made a motion to suspend the Pongal Restaurant's license for seven (7) days holding three (3) days in abeyance to reopen if improvements have been made. If there are future violations you will come back before this Board for the possibility of your license being revoked.

Mr. Reader seconded. So voted unanimously.

**7:30 p.m. Max Noodles – 700 Boston Road – Request Waiver of Regulations**

Mrs. O'Rourke stated the next item on the agenda is Max Noodles, 700 Boston Road, requesting a Waiver of Regulations.

Max Gow, Kay Road, Burlington, MA, identified himself. Mr. Gow explained that he and his wife want to open an Asian Fusion Noodle Restaurant at 700 Boston Road. We are going to provide healthy food such as noodles, salads, wraps, soups and specialized side foods. The cooking method we are going to use is steamed, boiled, oven baked and grilled. We are not going to deep fry or stir fry. We will not be using a lot of grease. We are going to install an interior grease trap according to the stipulations of the Health Department.

Mr. Courtemanche explained that Mr. Gow is proposing an Asian Fusion restaurant. The menu will mostly feature noodle dishes from various Asian countries. They will not be using fry-o-lators or woks so they don't have the amount of grease that is normally associated with this type of food. They are going to install an interior grease trap that will be located next to a three (3) bay sink. Mr. Courtemanche recommended that Waiver of Regulations be granted based on the size of the restaurant, the type of food proposed and the limited use of grease producing equipment. Mr. Courtemanche recommended that water testing and Best Management Practices be included in the Order of Conditions. The restaurant will have 18 seats and most of the food will be take out.

Mr. Gow explained that we will not be cooking any fried foods. The noodles will be most boiled, steamed, oven baked and grilled.

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

Mr. Berube explained that the Board has granted a waiver of regulations requirements for exterior grease traps in other restaurants. Mr. Courtemanche has reviewed this establishment thoroughly and it does not appear that they will generate any large amounts of grease. I recommend that the Board grant the waiver.

Mrs. Giroux made a motion to grant a Waiver of Billerica Health Regulations, Chapter 5, Section 2.2.001 that requires the installation of an exterior grease trap to serve the proposed food service establishment, Max Noodles to be located at 700 Boston Road based upon the following findings of fact and subject to the following conditions:

**FINDINGS OF FACT**

1. The work described in the applicant's request is within an area subject to protection under the Board of Health's Rules and Regulations, Chapter 5, Section 2.2.001.
2. The applicant proposes to construct a 1,700 square foot, eighteen (18) seats, Asian Fusion Noodle Restaurant. The majority of the sales will be generated by take-out sales.
3. The operation will not generate any significant fats, oil and grease. There will be no deep fryers or woks used in the establishment.
4. The applicant proposes to utilize an interior grease trap within the proposed food service establishment (FSE). The interior grease trap will be monitored and cleaned every month. A maintenance record shall be kept and made available for inspection by the Board of Health.
5. 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 6, 10, 14, 15 and 25 in accordance with the Board of Health regulations and Special Conditions:

- A. An interior grease trap shall be installed in accordance with the State Plumbing Code, 248CMR10.00. The interior grease trap must have an inspection port installed on the outlet. Water samples will be taken by the Billerica Wastewater Division for the analysis of FOG (fats, oil, grease) content. The cost for this test will be paid by the applicant.
- B. The applicant shall provide a copy of a maintenance agreement with a qualified service company to pump and maintain the interior grease trap every month or more often to ensure proper functioning of the grease recovery system. The applicant shall keep all pumping and maintenance records and make them available for inspection by the Board of Health.
- C. The food service establishment (FSE) shall work with the Board of Health to implement Best Management Practices (BMP's) to prevent or reduce the discharge of Fats, Oil and Grease (FOG) and to the building drain and the sewage disposal system. The FSE shall train the staff to ensure an acknowledgement of the BMP's for Food Service Employees and submit the acknowledgements to the Board of Health.
- D. This waiver shall be subject to periodic review by the Board of Health to ensure compliance with applicable rules and regulations. Fees will be assessed for any special inspections and testing.

- E. In the event of a grease blockage or other significant violations relative to the maintenance of the grease recovery system, this waiver shall be **immediately** revoked. The applicant shall be required to install an exterior grease trap to serve the food establishment. The exterior grease trap shall be designed and constructed in accordance with the State Environmental Code, Title 5.
- F. Any change or expansion of the food service operation (e.g. menu change, etc.) requires prior approval of the Board of Health.
- G. This waiver cannot be transferred from one person to another person, from one food establishment to another or from one type of operation to another.

Mr. Grady seconded. So voted unanimously.

**7:45 p.m. Gibbs Oil – 297 Boston Road – Request Variance for work within the Flood Plain and Stormwater Management Approval**

Mrs. O'Rourke stated the next item on the agenda is Gibbs Oil, 297 Boston Road, requesting a Variance for work within the Flood Plain and Stormwater Management Approval.

Anthony Fruchtl presented the Board with a large scale design of the proposed Gibbs Oil convenience store and gas station.

Anthony Fruchtl, Ayoub Engineering, Inc., Pawtucket Rhode Island, representing Gibbs Oil LP, 297 Boston Road, Billerica identified himself. Mr. Fruchtl explained that the proposal is to demolish the existing auto service station and construct a 2,016 square foot retail convenience store with 4 gasoline pumps under a canopy. The site for the proposed project is a 25,052 square feet lot. It will be very similar to the Cumberland Farms development located at 301 Boston Road. Additional site infrastructure will include new underground fuel storage tanks, asphalt and concrete paving, concrete curbing and sidewalks, a screened dumpster area, a drainage system with treatment units and a new grease trap sewer connection. The amount of fuel will be the same as they are permitted to have now. There will be one standard pump for diesel fuel. The existing site has five (5) onsite parking spaces and the new site will have (12) twelve parking spaces. Mr. Fruchtl explained and pointed on the plans to the location of the enclosed dumpster and the free air station. We have received approval from the Board of Appeals for the location of the building and signage. After meeting with Adam Bossi, Director of Environmental Affairs and Richard Berube, Director of Public Health the building had to be relocated out of the designated flood plain area. Mr. Fruchtl explained and pointed to the bordering vegetated wetland off site and the fifty (50) foot no alteration zone that is on the edge of the property line. Mr. Fruchtl explained and pointed to the one hundred (100) foot wetland buffer zone and approximately 2,475 square feet of the project site falls within a two hundred (200) foot Outer Riparian Buffer of the river front area. We had to appear before the Conservation Commission to request that work could be done in those areas. There will be no building in those areas and there will be minimal impervious impact in any of those areas. Mr. Fruchtl explained that the Stormwater management design includes, regrading the site, routing roof and canopy runoff and routing it to a bio-retention basin. Some of the pavement runoff will be captured and routed through a Stormceptor unit and some directly to the bio-



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retention basin. The Stormceptor will separate solids and hydrocarbons from the water. A three chamber oil/grit separator has been added to the plans to capture total suspended solids and hydrocarbons from paving runoff prior to entering the bio-retention area. The runoff is then released to the bio-retention basin while regular maintenance of the Stormceptor removes the solids and hydrocarbons. The Conservation Commission requested that we submit our stormwater plan to Phil Paradis, BETA Group for a peer engineering review. We received comments and addressed those comments. Phil recommended the following conditions be included in the decision. One is regarding that the sewer and grease trap lids be bolted and sealed. The second is that the applicant provides a letter from the LSP of record indicating that they have reviewed the plans and this project will not adversely impact down gradient properties or the ongoing cleanup operations. This project will improve the environmental quality of the site by capturing, treating and infiltrating stormwater runoff. The reason we are requesting a Variance is because the 100 year flood plain runs through the site. Originally the Green Engineering Flood Plain elevation was 122 but after discussions with Mr. Berube and Mr. Paradis he indicated that 3 feet can be waived and the elevation of 119 (118.6 NAVD88) could be used to evaluate impacts. The design includes a slight increase in impervious surfaces to be mitigated by the installation of a bio-retention basin. We are requesting a Variance for work within the flood plain and Stormwater Management approval. I will answer any questions the Board may have.

Phil Paradis, Jr. Project Manager, BETA Group identified himself. Mr. Paradis explained that the project qualifies as a Land Use with Higher Potential Pollutant Loads because it is a fueling station. The project includes Best Management Practices which includes covering the fuel island and proper BMP's to capture spills before discharging to infiltration systems. The project meets the Stormwater Management standards for capture, control and treatment of stormwater runoff. BETA Group has reviewed the impacts of the Green Engineering Flood Plain and FEMA lists the flood elevation as 116. The GEFP is higher but after reviewing the elevation with the Director, Richard Berube the Billerica regulations allow a three (3) foot waiver resulting in an adjusted floodplain of 118.16. There will be excavation to provide rain guard and additional storage.

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

No abutters were present.

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

Mr. Berube explained that the stormwater management improvements are proposed to mitigate flood plain impacts. This project will be a vast improvement in environmental protection over the current conditions. I recommend granting approval.

Mr. Kane made a motion to grant a Variance of Board of Health Rules and Regulations, Chapter 5, Section 5.5.005 (1) and (2) for Gibbs Oil Co. at 297 Boston Road in order to construct a convenience store/fueling station in and within one hundred (100) feet of Flood Plain and also seek stormwater

management approval pursuant to Board of Health Rules and Regulations, Chapter 6 based on the following findings of fact and pursuant to the following conditions:

**FINDINGS OF FACT**

- 1) The work described in the applicant's request is within an area subject to protection under the Billerica Health's Rules and Regulations, Chapter 5, Sections 5.5.005 (1) (2) and Chapter 6 inclusive.
- 2) The Board of Health conducted a public hearing on September 9, 2013 and properly notified abutters in accordance with Billerica Health Regulations, Chapter 1, Section 1.2.007.
- 3) The applicant proposes to completely redevelop an existing commercial lot containing a 2,487 square foot building, associated parking, a fuel island with four (4) gas pumps and underground storage tanks (UST's). The scope of the project includes the demolition of all site features, removal of the UST's and the construction of a 2,016 square foot convenience store, a four (4) island fueling area under a canopy, new UST's a stormwater management system as well as new parking and landscaped areas.
- 4) The project was reviewed by Phil Paradis, Jr. of BETA Group, Inc., the Board of Health's Consulting Engineer, for potential impacts to the Flood Plain as well as compliance with applicable drainage regulations and the provisions of 310CMR15.000, the State Environmental Code, Title 5 and the Board of Health Rules and Regulations, Chapter 5 and the Massachusetts Contingency Plan.
- 5) The Board of Health will impose reasonable conditions to ensure the project is constructed in accordance with approved plans.
- 6) The Board of Health has determined that the actions proposed by the applicant are adequate measures to protect the public health and environment and complies with the intent of Board of Health Rules and Regulations. Further, approval of the applicant's request will not be detrimental to the public health and environment.

**CONDITIONS**

Standard conditions number 1, 2, 3, 4, 5, 6, 8, 9, 10, 11, 12, 13 14, 15, 17, 18, 19, 21, 22, 23, 24, 25, 26, 27, 28 and 29 in accordance with the Board of Health regulations and Special Conditions:

- A) All construction must be in accordance with plans submitted for review and approval, prepared by Ayoub Engineering, Inc., dated May 3, 2012 and revised to September 4, 2013 and stamped by Alan J. Micale, RPE#40143.
- B) The applicant must provide food service establishment plans for the proposed convenience store to the Board of Health for review and approval.

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- C) A Licensed Site Professional (LSP) shall be required to be on-site during the excavation and removal of the existing underground storage tanks (UST's). The LSP shall utilize a Photoionization Detector (PID) to screen soil samples during this activity. A report of the LSP's findings shall be submitted to the Board of Health.
- D) The applicant shall provide a letter from the LSP of record indicating that they have reviewed the plans and that the project will not adversely impact down gradient properties or ongoing cleanup operations.
- E) Sewer covers with rim elevations below the 100 year flood elevation (118.16 NAVD 88) are to be bolted and sealed.

Mrs. Giroux seconded. So voted unanimously.

**8:00 p.m. Marc Lombardo – 9 Eubar Circle – Request Variance for work within the Flood Plain**

Mrs. O'Rourke stated the last item on the agenda is Marc Lombardo, 9 Eubar Circle requesting a Variance for work within the Flood Plain.

Bruce Saluk presented the Board with a large scale drawing of the proposed addition, porch and detached garage to be constructed at 9 Eubar Circle.

Bruce Saluk, Project Consulting Civil and Design Engineer, Bruce Saluk & Associates, Inc. Marlborough, Ma identified himself. Mr. Saluk explained that he is representing Marc Lombardo, owner of the property. The property is approximately 1.2 acres. Ox Bow Associates has prepared this supplement to the Notice of Intent (NOI) submitted for this project. Mr. Saluk pointed to the plan and explained the wetland area and the existing house. The existing house is on town water and town sewer. This property is partially within the Green Engineering Flood Plain (GEFP), but outside of the FEMA Flood Plain. Mr. Lombardo is proposing to construct two (2) additions. The first proposed addition is an 18 ft. x 22 ft. off the side of the house and a 20 ft. x 10 ft. porch addition behind the existing house. A new 26 ft. x 50 ft. detached garage is also being proposed, a walkway with a stone recharge trench drain and a paved driveway. Mr. Saluk pointed to the proposed garage and the paved sidewalk out to the garage. We are proposing the construction of two (2) dry wells to capture and infiltrate roof runoff from the existing house, proposed addition and garage. Mitigation work is being proposed for the work within the 25 and 50 foot setbacks from the wetlands. We are proposing a planting area which consists of over two thousand (2,000) square feet. A vegetated barrier will also be constructed and have plantings to minimize any human activity towards the wetland area. There will be a trench drain approximately seventy-five (75) feet in length along the proposed sidewalk. The stone trench drain will take the water from the paved sidewalk area and recharge it into the ground. The request is for two (2) variances. The first variance we are requesting is for work within twenty-five (25) feet of the GEFP. The second variance is to allow the construction of a garage within the GEFP. Mr. Saluk explained that the upstream water shed has been residentially developed resulting in much different water shed functions

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compared to when the map was developed. There is no flooding in this area. Mr. Lombardo is present to answer any questions the Board may have.

Mrs. O'Rourke asked are you removing the shed.

Mr. Lombardo replied we are going to move the shed to the opposite side of the house.

Mrs. O'Rourke asked what the addition is for.

Mr. Lombardo explained that the proposed addition is an law-in apartment for his parents because of health reasons. The proposal for the garage and the driveway is because of the additional cars that will be in the family. It will also provide an area for the kids to ride their bikes and play in.

Carol Lazott, Trustee for Alberta Hamilton, 6 Eubar Circle, identified herself. Ms. Lazott explained that the property may not be in the flood plain however we get water in our basement. Although I do not have an objection to the addition to the house I think that is a large area to pave and build a garage on. I am very concerned that we will get more water from the proposed garage.

Mr. Saluk explained and pointed to a catch basin at the edge of the road and how the road pitches towards the catch basin. There is a drainage easement associated with the property and a twelve (12) inch reinforced concrete pipe that discharges to the wetlands. All of the drainage that is coming from the driveway is going to be pitched to the road and the road is pitched towards the catch basin. The catch basin will drain to the wetlands. There will be two (2) drywells that will compensate for roof runoff.

Mr. Lombardo explained that he does not get any water.

Ms. Lazott explained that she is concerned because after construction the project will settle and we will probably get water from that site.

Mr. Berube explained that your basement floor could be in groundwater. Mr. Lombardo's construction is not going to impact the groundwater.

Mr. Saluk explained that the rain water will go to the catch basin faster than before. Before the rain water was penetrating into the ground and it would take longer. Everything will be moving towards the wetland.

Kelly McCluskey 8 Eubar Circle, identified herself. Ms. McCluskey explained that she has lived at 8 Eubar Circle for six (6) years and does not have any issues with water in her basement. Ms. McCluskey explained that she is present to support the project.

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

Mr. Kane stated that his only concern is the big increase in impervious surface adjacent to the flood plain.

Mrs. Giroux stated that she is okay with this project because the catch basin is at the end and he is losing the other driveway and there will also be two (2) dry wells.

Mr. Berube explained that he met with Mr. Lombardo, Mr. Saluk, his engineer and the Conservation Commission. We discussed this project and they incorporated a lot of our suggestions into their plans. We discussed the driveway for the garage and we agreed that we did not want to see the driveway dip into the yard because the runoff from Eubar Circle would run onto the property without any treatment. We felt that it would be better if the driveway pitched towards the circle so that the catch basin would catch the runoff and then direct it out towards the wetlands. The Conservation Commission and I walked the site and we noticed the drainage easement that cuts across the property. We discovered that there is a problem with the culvert and the pipe is partially collapsed. There is also a great deal of sediment build-up at the end of the pipe that obstructs the flow. I discussed this problem with the Department of Public Works Engineering Office and they are going to address that problem. If that issue is resolved it will be beneficial to Mr. Lombardo and the neighborhood. It is going to be a combined effort between DPW and Mosquito Control because of the drainage issues.

Mr. Reader asked how big is the drainage pipe.

Mr. Berube replied the drainage pipe is a twenty-four (24) inch pipe. There is a disparity in the flood plain. The GEFP was prepared before this parcel and this area of River Pines was developed. The development of Baniulis Road and Charles Anna Lane has altered the GEFP. The Board has granted a variance to 7 Eubar Circle for an addition to their house.

Mr. Reader 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 to an existing single family dwelling within one hundred (100) feet of the Flood Plain and construct a detached garage within the Flood Plain at 9 Eubar Circle 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 construct an addition to the existing dwelling within four (4) feet of the Green Engineering Flood Plain (GEFP) and a detached garage within the GEFP. The site does not fall within the FEMA Flood Plain.
- 3) The GEFP has been altered by development in the River Pines Area (i.e. Baniulis Road and Charles Anna Lane) and the installation of drainage/stormwater infrastructure upstream of the subject property. The applicant proposes to install stormwater management improvements to mitigate any potential flood plain impacts.

- 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, 13, 14, 15, 24, 25 and 27 in accordance with the Board of Health regulations and Special Conditions:

- 1) All construction must be in accordance with plans submitted for review and approval, prepared by Bruce Saluk & Associates, Inc. dated August 27, 2013 and revised to September 4, 2013 and stamped by Bruce M. Saluk, RLS#35415 and RPE#32375.

Mrs. Giroux seconded. So voted unanimously.

**Open Microphone**

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

No one was present for open microphone.

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

The Board adjourned at 8:55 p.m.

Respectfully submitted,

Sandra Giroux  
Secretary

Joanne M. White  
Recording Clerk