

BOARD OF HEALTH MINUTES
January 6, 2014

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 2, 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 month of December 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's activities in the month of December have been slow due to the holidays and vacation time. However, Christine continues with her routine activities and assisting residents on a walk in basis. This month Christine has given out seven (7) pneumonia shots. Christine is working on an Employee Wellness Program for Smoking Cessation which will be offered in January. Christine reminds everyone that January through March is the height of the influenza season when the flu activity picks up. In the south there has been five (5) deaths attributed to the H1N1 flu. This year's vaccine covers that strain. Vaccine is still available for anyone that needs a flu shot. Mr. Berube asked the Board Members if they had any questions regarding Christine's report.

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

Mrs. O'Rourke stated the next report is from Health Agent, Phavy Pheng. Mrs. O'Rourke stated that she has several questions regarding Phavy Pheng's report.

Mrs. O'Rourke asked about the status of the couple that lived at 5 Baker Street.

Mr. Berube replied that the property has been sold and the wife is in a home. We do not know where the husband is living.

Mrs. O'Rourke asked how often does Phavy check on the status of 19 and 21 Old Elm Street. What does no change in status mean?

Mr. Berube explained that the properties are owned by Pace Industries and Phavy periodically checks on the properties. They have informed the Health Department in writing that they do not plan on occupying the buildings.

Mrs. O'Rourke asked how come they have outstanding violations.

Mr. Berube replied that the buildings are old and there are some minor violations. The buildings cannot be occupied without written approval from the Board of Health that the minor violations have been addressed.

Mrs. O'Rourke stated if the failing septic system at 3 Springs Road has been installed, why hasn't the septic system as-built been submitted to the Board of Health.

Mr. Berube stated that he has spoken to Steve Dresser about submitting the as-built plan.

Mrs. O'Rourke stated that she would like Steve Dresser to submit the as-built plan as soon as possible.

Mrs. Giroux asked about the renovations of the dwelling at 16R Radcliff Road and the comment of no change in status.

Mr. Berube explained that the court case was dismissed because there was a change in ownership. We talked to the new owners and they are working on the violations. A follow up inspection will be conducted as soon as the owners notify the Board of Health that the violations have been addressed.

Mrs. Giroux requested that a last follow up date be included on the status of all the cases in Phavy's activity report.

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Mr. Grady suggested that after a case has been on the report for a month or the case is closed it should be deleted from the report.

Mrs. O'Rourke asked what happens to 58 Alexander Road when the bank does not have any interest in the property. Does the property revert back to the Town of Billerica?

Mr. Berube replied possibly.

Mrs. O'Rourke asked what company on Innis Drive has a problem with junk and debris being dumped on their property.

Mr. Berube replied it could be all the businesses in that area contributing to the problem. The Board of Health will be looking into this situation in the spring. This case is still being investigated.

Mrs. O'Rourke asked about the abandoned property at 194 Salem Road and no change in status.

Mr. Berube explained that a notice was sent to the last owner of record and up to this time there has been no response.

Mrs. O'Rourke stated that she would like something to be done with the abandoned properties in Billerica.

Mrs. O'Rourke asked if Conservation has been notified about the wetland problems at 310 River Street and Town Farm Lane.

Mr. Berube explained that the Jehovah Witness Hall, 310 River Street is not in the wetland, it is in the flood plain. We were out on another matter and observed this problem.

Mrs. O'Rourke asked is there a wetland problem with Jack's junkyard.

Mr. Berube replied that we cannot verify the complaint about Jack's junkyard.

Mrs. O'Rourke asked about the oil release to the wetlands, can someone go out to verify the complaint.

Mr. Berube explained that the complaint was anonymous and lacks detail. There is no validity to the complaint.

Mrs. O'Rourke asked what number Bridge Street is the humming noise coming from.

Mr. Berube explained that an older gentleman complained about a humming noise coming from somewhere in the neighborhood. I investigated the complaint and could not verify that there was a humming noise.

Mrs. Giroux stated that she would like more detail and dates on Phavy's activity report.

Mrs. O'Rourke stated the last report is from Health Agent, Gary Courtemanche.

Mrs. O'Rourke asked how is the Pongal Restaurant and NaNa 7 doing.

Mr. Berube replied that they are making excellent progress and are complying with all the Board of Health rules and regulations.

Mrs. O'Rourke stated that she has not seen the shed that the Pongal Restaurant is supposed to be constructing.

Mr. Berube replied that they are waiting for their building permit approval. Plans for the shed have been submitted to the Board of Health.

Mrs. O'Rourke asked what is FOG.

Mr. Berube replied Fats, Oil and Grease. The Board of Health now requires that all establishments have exterior grease traps because of the problems in the past.

Mrs. O'Rourke asked about the status of the Purple Bamboo and Max Noodles.

Mr. Berube replied Max Noodles is awaiting approval from the Zoning Board of Appeal (ZBA). At this time no further activity has taken place at the Purple Bamboo.

Mr. Grady asked about the smoking odor coming from the kitchen area of Stelio's Restaurant.

Mr. Berube explained that this is not the first time that we have received a complaint regarding smoking in the kitchen at Stelio's. Gary could not find any evidence of smoking in the kitchen, however he will continue to monitor the situation.

Bi-Annual Beaver Management Report

Mrs. O'Rourke stated the next item on the agenda is the Bi-Annual Beaver Management Report.

Mrs. O'Rourke asked what happens to the beavers that are caught.

Mr. Berube replied that the beavers are destroyed. Mr. Berube explained that the beaver activity in the past six (6) months is down. Over the last six (6) months Beaver Solutions has maintained the town's flow devices and performed several new beaver interventions in town.

Mrs. O'Rourke asked who keeps the records on how many beavers are trapped.

Mr. Berube replied that Beaver Solutions provides the Board of Health with the information.

Empire Recycling

Mrs. O'Rourke stated the next item on the agenda is Empire Recycling.

Mr. Berube explained that a copy of the Notice for the Enforcement Conference with the Department of Environmental Protection (DEP) is included in the Board's package. The Enforcement Conference is still ongoing. DEP is looking for more information from Empire Recycling. Mr. Berube explained that he talks with DEP on a weekly basis regarding the activities at Empire Recycling. Phavy visits the site on a daily basis and reports her findings. We have been providing pictures and reports to DEP on a weekly basis. We have made it very clear to DEP that we are dissatisfied with the activities at Empire Recycling. Over the Christmas holiday the Board of Health received one (1) noise complaint. Phavy verified the complaint. A one thousand (1,000) dollar fine will be issued. We will be issuing a one thousand (1,000) dollar fine each day when there is a nuisance condition or a violation.

Mrs. O'Rourke stated that she visited the site and the conditions were terrible. Mrs. O'Rourke asked if they needed a permit from DEP to operate.

Mr. Berube replied that originally another recycling operation was there before Empire Recycling. Empire Recycling took over the operation and continued to run it.

Mr. Kane explained that if you have over a certain percentage of solid waste you need a permit to operate a solid waste facility. Empire Recycling does not have a solid waste permit. They do not need a recycling permit.

Mrs. O'Rourke asked how involved is DEP going to be with this situation.

Mr. Berube explained that DEP only visited the site because the Board of Health contacted them and urged them to come out and see the operation. Mr. Berube stated that he does not know how long we should wait to see what the outcome is from DEP before we take any action. I certainly do not want to take any action that is going to contradict anything that DEP is going to do. I want to do something that works in conjunction with DEP.

Mrs. O'Rourke stated they do not have a back-up plan when their equipment breaks down.

Mr. Berube replied that is not true, they have Standard Operating Procedures (SOP's). They have provided a copy of the SOP's to the Board of Health for review. We made some comments regarding the SOP's and Empire Recycling revised the SOP's. They are not following their SOP's. They have been bringing some paper and cardboard to Charles George's operation for recycling.

Mrs. O'Rourke stated if the baler breaks down don't they have another baler?

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Mr. Berube replied they have two (2) balers. Their main baler is broken and the other one cannot handle the material that is being brought in. So they are supposed to make arrangements to bring the materials to other facilities for recycling.

Mrs. O'Rourke stated that we have other recycling operations in town and we have not received any complaints from the other recycling operations. They work inside. We have given them permission to construct the addition. How long do we have to wait for DEP to take some action?

Mr. Berube replied what direction does the Board want me to go in.

Mrs. Giroux stated that Empire Recycling should clean up and resolve their problems.

Mr. Grady suggested that the Board contact Pat Costello and express their concerns.

Mr. Berube explained that he has brought this situation to the attention of the Town Manager, John Curran and he agrees that we should wait to see what DEP does before we take any action and involve Town Counsel.

Mrs. O'Rourke asked how long do we wait for DEP. We have waited long enough.

Mr. Grady suggested that Marie O'Rourke, Chair of the Board send a letter to DEP requesting the status of the situation.

Mr. Berube explained that the Board of Health is going to monitor the operation daily and continue to issue a one thousand (1.000) dollar fine each day that a violation is observed.

Mrs. O'Rourke stated that money does not seem to be an issue. They pay the fines. Mr. Motzkin stated that he does not have a problem with money.

Mr. Berube replied that he seems to think that money is an issue because it is taking a long time for the new baler to be installed.

Mrs. O'Rourke suggested that Mr. Berube send a letter to DEP asking them how long the Board of Health should wait before we take enforcement action.

Mr. Kane asked what is the date of the continued Enforcement Hearing.

Mr. Berube replied that he did not know.

Mr. Grady asked can a representative from the Board of Health go to the meeting.

Mr. Berube replied no, this is strictly between DEP and Empire Recycling.

Mrs. O'Rourke asked why can't a member from the Board of Health attend the meeting.

Mr. Berube replied that he asked that question and DEP replied no.

Mr. Kane asked is this a public hearing.

Mr. Berube replied no.

Mr. Kane requested that Mr. Berube contact DEP and find out the date of the next hearing and then notify the Board Members. Mr. Kane also requested that Mr. Berube ask DEP what information they are waiting for from Empire Recycling.

7:15 p.m. J.W. Sullivan Corporation – Rangeway Road – Request Waiver of Regulations

Mrs. O'Rourke stated the next item on the agenda is J.W. Sullivan Corporation, Rangeway Road requesting a Waiver of Regulations.

Douglas Stewart, Pennoni Associates, presented the Board with a large scale drawing of the proposed project to be located on Rangeway Road.

Douglas Stewart, Pennoni Associates identified himself. Mr. Stewart explained that the proposed project will be located on Rangeway Road. The owner is requesting a Waiver of Regulations so that he can construct a contractor's storage garage. Even though the Green Engineering Flood Plain Map shows a small isolated area that area does not exist. There is zero depression and the lot shows no sign of flooding, damp soil or other signs of periodic flooding.

Mrs. O'Rourke asked what will the building be used for.

Mr. Sullivan replied the building will be used to store equipment and tools.

Mrs. O'Rourke asked will there be an office in the building.

Mr. Sullivan replied no.

Mrs. O'Rourke asked if there will be a septic system.

Mr. Stewart replied yes, the plans have been submitted to the Board of Health.

Mrs. O'Rourke asked why do you need a septic system if there isn't going to be a bathroom.

Joseph Sullivan, owner of the property, identified himself. Mr. Sullivan explained the bathroom is for the employees that come to pick up items that they have stored in the building.

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

The Board Members did not have any questions.

Mr. Berube pointed to the plan and explained that the isolated pocket of flood plain is an aberration that makes no sense. The site does not fall within the FEMA Flood Plain. These little pockets on the top of hillsides and hilltops are also aberrations. This isolated flood plain crosses several contour elevations. There is no true depression there at all.

Mrs. Giroux made a motion to grant a waiver of the Billerica Health Regulations, Chapter 5, Section 5.5.005 (1) to allow construction within an isolated pocket of the Green Engineering Flood Plain at Rangeway Road Assessor's Map 21, Parcel 4 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 5.5.005 (1).
- 2) The applicant proposes to construct a contractor's building and yard. The site previously contained a tree service operation. The building will be served by a sewage disposal system. The proposed sewage disposal plans meet the provisions of the State Environmental Code, Title 5. The proposed project impacts an isolated flood plain as delineated on the Green Engineering Flood Plain (GEFP). The site does not fall within the FEMA Flood Plain.
- 3) The existing conditions of the site do not correspond to the topography delineated on GEFP Map #18. In particular, there are no signs that the proposed location of the contractor's building and yard was ever subject to flooding. Therefore, the isolated flood plain was altered or never existed.
- 4) The Board of Health has determined that the actions proposed by the applicant are adequate measures to protect public health and the 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 the environment.

CONDITIONS

Standard conditions number 2, 3, 4, 5, 6, 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 Pennoni Associates, Inc., dated November 7, 2013 and revised to November 26, 2013 and stamped by Benjamin C. Osgood, Jr., RPE #45891.

- B) The applicant must provide final approved plans for any project covered by the conditions. Final plans are considered plans approved by all town departments.

Mr. Grady seconded. So voted unanimously.

7:30 p.m. Shawsheen Woods Realty Trust – 63 Salem Road – Request Waiver of Regulations

Mrs. O'Rourke stated the last item on the agenda is Shawsheen Woods Realty Trust, 63 Salem Road, requesting a Waiver of Regulations.

Stephen Dresser, Dresser, Williams & Way, Inc. representing Shawsheen Woods Realty Trust identified himself. Mr. Dresser explained that Shawsheen Woods Realty Trust purchased the existing dwelling at 63 Salem Road. They want to demolish and rebuild a slightly larger house with a second floor. There is floodplain on the property. The existing house is eighteen (18) feet from the flood plain and the proposed house will be fourteen (14) feet from the flood plain. There was a swale in the 1970's that ran down the property and was fed by a pond where the Marshall Middle School football field is now located. It is a fairly significant swale that saw a lot of water in the 1970's. The pond no longer exists. It also appears that the determination of this flood plain pre-dates the construction of the homes on Heritage Road. There are no wetlands on the site due to the alteration of the drainage.

Mrs. O'Rourke asked is there water in the swale.

Mr. Dresser replied the swale is dry now. It is a drainage swale.

Mrs. O'Rourke asked what would happen if the snow melted in the swale.

Mr. Dresser explained that if the snow melted in the swale, the swale would catch some of the runoff and it would drain out to Salem Road. It is not a flood plain anymore.

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

The Board Members did not have any questions.

Mr. Berube explained that it is more indicative of an old drainage pattern than a true flood plain. The Green Engineering Flood Plain no longer exists since the development of the Marshall Middle School and football field. The house will be built on a similar footprint as the existing house. There will be no filling. There will be no adverse impacts.

Mr. Dresser explained that the applicant is proposing to install infiltration units for roof runoff from the new dwelling.

Mr. Kane made a motion to grant a Variance for work within twenty-five feet of the flood plain.

Mr. Berube stated that it is a Waiver of Regulations. I discussed this project with Steve Dresser and explained that this project could be filed as a Waiver instead of a Variance.

Mr. Kane explained that he did not have a problem with granting the request for this project however, the proper paperwork needs to be filled out and submitted to the Board of Health for review and approval before the waiver can take place.

Mr. Dresser stated that he would bring the appropriate application to the Board of Health office tomorrow.

Mr. Kane made a motion to grant a Waiver of Billerica Health Regulations, Chapter 5, Section 5.5.005 (1) to allow the construction of a single family dwelling to be located at 63 Salem Road within twenty-five (25) feet of the Green Engineering Flood Plain with the proviso that the appropriate paperwork be submitted and accepted by the Board of Health 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 5.5.005 (1).
- 2) The applicant proposes to raze an existing dwelling and construct a new larger single family dwelling in approximately the same location of the existing structure. The location of the proposed dwelling will be fourteen (14) feet from the Green Engineering Flood Plain (GEFP) as delineated on GEFP May #67. The property does not fall within the FEMA Flood Plain. The new dwelling will be served by town water and sewer.
- 3) The GEFP is more indicative of an old drainage pattern than a true flood plain. The source of the drainage flow no longer exists since the development of the Marshall Middle School football field. Furthermore, it has been determined that there are no jurisdictional wetlands through a site assessment performed by Northeastern Consulting Forestry Services. Typically, there are wetlands associated with flood plain areas. Therefore, the GEFP in this area has been altered and no longer exists. The applicant is proposing to infiltrate the roof runoff from the new dwelling in order to address any drainage concerns.
- 4) The Board of Health has determined that the actions proposed by the applicant are adequate measures to protect public health and the 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 the environment.

CONDITIONS

Standard conditions number 2, 3, 4, 5, 6, 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 Dresser, Williams & Way, Inc., dated December 17, 2013 and stamped by Stephen R. Dresser, RPE #49202.
- B) The applicant must provide final approved plans for any project covered by the conditions. Final plans are considered plans approved by all town departments.
- C) A deephole test must be performed at the proposed location of the proposed dwelling to determine the groundwater elevation. The minimum vertical separation distance from the basement floor above the high groundwater elevation shall be two (2) feet pursuant to Billerica Health Regulations. Documentation must be submitted to the Board of Health prior to the approval of any permits.

Mrs. Giroux seconded. So voted unanimously.

Mrs. O'Rourke asked Steve Dresser if he has completed the septic as-built for 3 Springs Road.

Mr. Dresser replied that he would submit the as-built to the Board of Health by January 10, 2014.

Open Microphone

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

No one was present for open microphone.

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

The Board adjourned at 7:45 p.m.

Respectfully submitted,

Sandra Giroux
Secretary

Joanne M. White
Recording Clerk