

**BOARD OF HEALTH MINUTES**  
**February 10, 2014**

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, Richard Berube, Director and Joanne White, Recording Clerk.

**ACCEPTANCE OF MINUTES**

Mr. Grady made a motion to accept the Meeting Minutes of January 6, 2014. Mr. Kane seconded. Four (4) voted in favor, one (1) vote abstained (Robert Reader).

**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 January are included in the Board's package.

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

Mr. Berube explained that Christine continues with her routine activities and Communicable Disease follow-up/reporting with MAVEN. Flu vaccine is still available for anyone that needs a flu shot. Christine has a limited supply of the shingles vaccine for Billerica residents. If anyone is interested in getting the shingles shot they can contact Christine for an appointment. The shingles vaccine is advertised on the town website and in the Billerica Minuteman. Christine along with Bill Laurendeau, Director of Emergency Management is working on a mock Emergency Dispensing Site (EDS) drill that will occur this spring at the Marshall Middle School.

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

The Board Members did not have any questions.

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

Mr. Berube explained that Gary continues to monitor the progress at the Pongal Restaurant and Nana 7. The pipe at the Pongal Restaurant burst and the restaurant was closed for seventeen (17) days for repairs. The repairs have been completed and the restaurant has reopened.

Mr. Grady asked if the shed has been constructed.

Mrs. O'Rourke stated that she has not seen the shed. What is the hold up?

Mr. Berube replied that he does not know however, the Board of Health has reviewed and approved the plans for the shed. They are waiting for the permit from the Building Department.

Mrs. O'Rourke commented that the Food Consultant, Maureen Lee helped them with a plan of correction and a training schedule. One of her suggestions was to build a shed to store paper products and the shed is still not constructed.

Mr. Reader commented that you need a plot plan to construct a shed and it takes a while for final approval from all other town agencies.

Mr. Grady asked why did it take seventeen (17) days to clean up the restaurant.

Mr. Berube explained that the whole dining room area was ruined. The electrical wiring needed to be redone. The building is old and the attic wasn't insulated. With the new insulation this problem should not happen again. All the walls and carpeting were ripped up and discarded because of the water damage.

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

The Board Members did not have any questions.

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

Mr. Berube stated that at the last Board of Health meeting the Board had a lot of comments regarding Phavy's report so next month the format will be changed. The old information will be kept for review and the new information will be italicized. This month's report will wrap up some of the old cases and address some of the comments from last month.

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Mrs. O'Rourke asked why the most recent pumping receipts from 78 Pinedale Avenue have not been submitted to the Board of Health office. In the last report Phavy commented that the pumping records were up to date.

Ms. Pheng explained that she thought the pumping receipts were up to date however when she went to court she realized that the most recent pumping record was not available. Ms. Pheng explained that it is up to the homeowner to submit the records to the Board of Health office. Sometimes Mr. Mitchell sends in the pumping records a month or two late.

Mrs. O'Rourke asked when was the last time you received a pumping record from Mr. Mitchell.

Ms. Pheng explained that the last pumping record she received was at the end of November, 2013. The Judge granted Mr. Mitchell until March 10, 2014 to resolve this matter and address the outstanding violation dated March 2, 2010. If this matter is not resolved the court will execute an order to vacate.

Mr. Berube explained that this case has dragged on long enough and it is time for Mr. Mitchell to take care of the problem.

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

Mr. Grady asked about the status of Empire Recycling.

Mr. Berube explained that the Board of Health recently fined Empire Recycling one thousand (1,000) dollars, which they have paid. They voluntarily came up with a plan of correction to address some of the issues that the Board of Health has raised over the last couple of months. Mr. Berube stated that they are not progressing the way they should. It is a case of poor management and lack of accountability. If one of the Motzkin's is not present the employees do whatever they want. Empire Recycling has not concluded the Enforcement Conference with the Department of Environmental Protection (DEP). I have not heard from DEP regarding the outcome of the Enforcement Conference. I have met with the Building Commissioner, Mark LaLuimere and Deputy Chief Tom Ferraro, Fire Prevention Bureau and we are going to meet with DEP. If there is no plan to address the issues, we are going to meet with the Town Manager and Town Counsel and initiate some action on the Town's behalf.

Mrs. Giroux asked when do you think you will be able to update the Board on this matter.

Mr. Berube replied that he expects to have some information for the Board at the next Board of Health meeting.

Mr. Grady stated that any time there is cardboard beyond the canopy, Empire is fined one thousand (1,000) dollars.

Mr. Berube replied yes and they always pay the fine.

Mr. Grady asked about the new baler.

Mr. Berube explained that the new baler is in place. It took a while for them to get it up and running.

Mr. Kane commented that he has driven by Empire Recycling and it does look better.

Mr. Berube informed the Board Members that there was an article in the Boston Globe last week regarding the noise complaints at Empire Recycling.

**Proposed FY15 Budget**

Mrs. O'Rourke stated the next item on the agenda is the Proposed FY15 budget. Mrs. O'Rourke asked the Board Members if they had any questions.

Mr. Berube explained that the FY15 budget is level funded. The figures are the same as FY14.

The Board Members did not have any questions.

**FY13 Annual Town Report**

Mrs. O'Rourke stated the next item on the agenda the FY13 Annual Town Report. Mrs. O'Rourke asked if the Board Members had any comments on the Town Report.

The Board Members did not have any questions.

**Reschedule March Meeting**

Mrs. O'Rourke stated the next item is the Reschedule the March Meeting.

Mr. Berube explained that he would like to reschedule the March meeting because he has an event that he would like to attend. It was a Christmas gift. We can meet later that week or Monday, March 10, 2014.

A discussion was held on the best time for the next meeting. The March Board of Health meeting is tentatively rescheduled for March 10, 2014.

Mr. Berube stated he will notify the Board in advance of the date and location of the next meeting.

**Tobacco Control Compliance Check Report – Ron Beauregard**  
**Healthy Communities Tobacco Control Program**

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Mrs. O'Rourke stated the last item under Board of Health business is Ron Beauregard Healthy Communities Tobacco Control Program.

Mr. Berube explained that Mr. Beauregard is late because he is attending the Andover Board of Health Meeting.

**7:30 p.m. MJ Sugars – 880 Boston Road, Unit #7 – Request Waiver of Regulations**

Mrs. O'Rourke stated the next item on the agenda is MJ Sugars, 880 Boston Road, requesting a Waiver of Regulations.

Jonathan Power, 26 Radcliffe Road, Billerica, identified himself. Mr. Power introduced his sister Mackenzie Power. Mr. Power explained that he was requesting a waiver of regulations for the installation of an exterior grease trap. Mr. Power explained that he will not be doing anything with grease that would be going down the sewer system. Vegetable oil will be contained in all of our baking and cooking products. My sister will be baking and decorating the cakes. The only cooking appliances we will have is a double oven and a hot plate. We will be doing some sautéing. We will not be grilling, frying or doing any other food service cooking. We provide chowders and soups for takeout. The plan is for a five hundred (500) square foot bakery. A one hundred (100) pound interior grease trap will be installed. A plumbing company will service the interior grease trap on a monthly basis.

Mrs. O'Rourke asked where is the proposed bakery located.

Mr. Power explained that the bakery would be located in the 880 Plaza in Pinehurst.

Mrs. O'Rourke asked is there any other restaurants in that plaza.

Mr. Berube replied no, there was a proposal for a Mexican Restaurant but that never happened.

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

Mrs. Giroux explained that there will be a stipulation that if anything goes wrong you will be required to install an exterior grease trap.

Mr. Power stated that he understands. Mr. Power explained that he will have the grease trap tested and maintained monthly.

Mrs. O'Rourke stated that the maintenance records will need to be available for the Board of Health.

Mr. Power replied that he is a former general manager of a restaurant and has been involved with these procedures before.

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Mr. Berube explained that Gary has reviewed and approved the plans for the establishment. Gary stated in his report that a standard plumber's grease trap (interior grease trap) with a test port on the outlet be installed under the three (3) bay sink. Gary recommends that if the Board approves the waiver that the conditions relative to water sampling and Best Management Practices for grease removal be included in the approval.

Mr. Kane 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 at the proposed food service establishment, MJ Sugars to be located at 880 Boston Road. The installation of an exterior grease trap will be required in the event of a grease blockage or other significant violation relative to the maintenance of the interior grease trap. These conditions are based on 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 open a small bakery that specializes in cake decorating. A limited menu of prepared items will be offered as well. All foods will be available for take out service only. There will be no seating. The limited menu will not generate any significant grease discharge nor will there be any equipment (e.g. fryolators, grills, etc.) that will contribute to any grease discharge into the sewer system.
3. The applicant proposes to install an interior grease interceptor within the proposed food service establishment. The interior grease interceptor will be monitored and cleaned every month. A maintenance record shall be kept and made available for inspection by the Board of Health. In addition, the applicant agrees to implement the Best Management Practices (BMP's) provided by the Billerica Health Department.
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 10, 14, 15 and 25 in accordance with the Board of Health Regulations and Special Conditions:

- A. These conditions, imposed by the Board of Health, cannot be changed without the written approval by the Board of Health and only after a proper public hearing is held.

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- B. The interior grease trap/interceptor shall be equipped with a test port at the outlet to provide access for monitoring activities.
- C. 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.
- D. 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) to the building drain and the sewage disposal system. The FSE shall train the staff to ensure that the BMP's are followed. The owner and employees of the FSE shall sign an acknowledgement of BMP's for Food Service Employees and submit the acknowledgements to the Board of Health.
- E. This waiver shall be subject to periodic review by the Board of Health to ensure compliance with applicable rules and regulations.
- F. The Board of Health in conjunction with the Town of Billerica Department of Public Works (DPW) Wastewater Division shall periodically monitor the grease discharge from said Food Service Establishment for any violations of the Town of Billerica Sanitary Sewer Rules and Regulations and the Board of Health Rules and Regulations. All costs associated with the monitoring shall be paid for by the applicant.
- G. 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.
- H. 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.

**Miscellaneous – Shaffer Landfill Solar Project**

Mr. Berube stated that the Shaffer Landfill Solar Project withdrew their request for a hearing at the last minute. Their request was to modify one of the Order of Conditions issued by the Board of Health. Mr. Berube explained that they wanted to use Recycled Concrete Aggregate for the access road instead of gravel. I informed them that Board would have to grant approval to modify that condition. After doing research they found that the material would not be available in the quantities that they would need so they withdrew their request and will use the gravel that was originally proposed.

Mr. Reader asked are they going forward with the project.

Mr. Berube replied yes, they are already set up on site. We had our first meeting last week.

Mr. Reader asked how long will it take for that this project to be completed.

Mr. Berube replied this project will probably be completed by the end of the summer. There are proposals for other solar facilities within Iron Horse Park that may come before the Board in the future.

**7:45 p.m. Fitzpatrick & Nolan – 10/12 Pondover Road – Appeal Hearing for Notice of Violation and Order for Correction**

Mrs. O'Rourke stated the next item on the agenda is 10/12 Pondover Road, Appeal Hearing for Notice of Violation and Order for Correction.

William Nolan 10 Pondover Road identified himself. Mr. Nolan stated that we are aware that we have a problem. The septic system at 10/12 Pondover Road was upgraded in 1995 by Bob Griffin. At that time we were told to pump the system every two (2) years. However we have been pumping it every year. We would like to connect to town sewer. We are not the only ones that have a problem with our septic system there are other houses on this street that have the same problem. We know that we have to do something. A long time ago we were working with Mr. Bento and he designed a plan so that the four (4) houses at the top of the street could connect to town sewer. We agreed to pay for the connections ourselves if the town would allow us.

Mrs. O'Rourke stated that the Board of Health has received a complaint and we are here tonight to address that complaint.

Mr. Nolan explained that we are present to see what our options are. We upgraded the system in 1995 and it cost us over \$10,000.00.

Mr. Berube explained that he has spoken with their attorney regarding this situation. I have also spoken with the Engineering Department. Pondover Road is proposed for the next sewer contract. If Town Meeting approves the funding for that contract, the earliest sewer would be available in that area would be 2018. That is four (4) years away and that is not soon enough. Mr. Berube stated that he would be willing to work with the Town Engineers to see if there is another alternative. We know that there is a history of failing septic systems on Pondover Road.

Mrs. O'Rourke commented that if they upgraded their system and sewer became available they could request a waiver from tying into town sewer at that time.

Mrs. Fitzpatrick stated that we were told that sewer would be coming down our street in 2008 and that never happened.

Mrs. O'Rourke asked how close to Pond Street do you live.



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Mr. Nolan replied about 600 feet away.

Mrs. O'Rourke asked could you tie into the sewer connection on Pond Street.

Lisa Nolan, 10 Pondover Road, identified herself. Ms. Nolan explained that we tried that. The four (4) houses at the top of the street agreed to connect to the sewer on Pond Street. The total cost would be around \$20,000 to \$30,000. We were going to split the cost but the town said that there would be some additional costs. The street would have to be paved and there would be a cost for the Police Officers that would be on duty so now the cost would be approximately \$70,000.

Mr. Nolan explained then one of the houses withdrew. Bob Griffin, owner of the property at 8/10 Pondover Road upgraded the septic system.

Mr. Reader asked when was the last time you got together with the other properties and asked them if they were still willing to split the cost for town sewer.

Mr. Nolan stated that we have not talked to any of our neighbors recently.

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

Mr. Berube stated it is a failed system and something needs to be done. Mr. Berube suggested that the Board sustain the order and grant them more time to explore what other options or alternatives they may have. I would be willing to work with them and talk to the Town Manager and the Selectmen to see if town sewer could be moved up to an earlier date in that area. Four (4) years is too long for them to pump their system and wait for town sewer. Something has to be done soon.

Mr. Grady asked if there are any other potentially failed systems on Pondover Road.

Mr. Berube replied that he knows of one other house. 30/32 Pondover Road has a failed system. Mr. Berube explained that most of those houses are two family homes. The soil and drainage conditions are poor in that area. Septic systems don't last long because of those conditions.

Mrs. O'Rourke suggested that Mr. Berube find out how many systems on Pondover Road have a failing septic system and then discuss this situation with the Director of Public Works, Abdul Alkhatib and see if there is some way this area can be made a priority so that the problem would be alleviated.

Mrs. Giroux stated that her concern is if it takes until 2018 for town sewer, what is the mean time fix? There are parts of town that have been promised town sewer and it took many years for them to get it. I don't want to promise them something that is not realistic.

Mr. Berube stated that is why I suggest that the Board sustain the order and give the Nolan's and Fitzpatrick's additional time to explore other alternatives.

Mrs. O'Rourke asked what type of soil is in your backyard.

Mr. Nolan replied that he did not know.

Mr. Berube replied that area has poor drainage.

Mrs. O'Rourke asked can another septic system be installed.

Mr. Berube replied they can put in another system, but then they would be faced with the same problem in 10-15 years. When they installed the system in 1995 the Title 5 standards changed. They installed the system under the new regulations that were promulgated back then. I did not expect this system to fail this soon.

Mrs. O'Rourke asked what was done in 1995.

Ms. Nolan replied a whole new septic system including a leach field was installed.

Mr. Berube stated it is a large system and I am surprised that this happened this soon.

Mrs. O'Rourke asked how many people live in this house.

Ms. Fitzpatrick replied that three people live on one side and four live on the other side. A total of seven people live in the house.

Mr. Berube suggested that the Board sustain the order for ninety (90) days and pump the system on a monthly basis. If we do not see the discharge then we can change the pumping schedule.

Ms. Fitzpatrick asked is Rosa Circle tied in to sewer.

Mr. Berube explained that only two houses on Rosa Circle are tied into town sewer.

Mrs. O'Rourke asked how many houses on Pondover Road do not have town sewer.

Mr. Nolan replied approximately 18 to 20 houses.

Mr. Reader made a motion to sustain in its entirety the Order of Correction issued January 13, 2014 for 10/12 Pondover Road for ninety (90) days. The septic system shall be pumped monthly or whenever necessary to alleviate any discharge of sewage to the surface of the ground.

Mrs. Giroux seconded. So voted unanimously.

**Tobacco Control Compliance Check Report – Ron Beauregard**  
**Healthy Communities Tobacco Control Program**

Mrs. O'Rourke stated the last item is Ron Beauregard, Healthy Communities Tobacco Control Program.

Ron Beauregard, Director of Healthy Communities Tobacco Control Program identified himself. Mr. Beauregard explained that the compliance checks have been going well in Billerica. There are a few establishments that are selling single cigars for \$2.50. Mr. Beauregard stated that in Fiscal Year 2013 out of 43 compliance checks there were 5 tobacco sales which is 12%. In Fiscal Year 2014 out of 42 compliance checks there were only 2 tobacco sales, which represent 5% and is well below the state average. None were repeat offenders. I have met with all the tobacco retailers and received feedback about the price differences of cigarettes. There is a minimum pricing law that is set by the Department of Revenue. The Board of Health regulations provide local enforcement action if cigarettes are found to be below the minimum pricing standard.

Mrs. O'Rourke asked what could you do if you found cigarettes being sold below the minimum pricing standard.

Mr. Beauregard explained that sometimes the cigarettes are old and the vendor will not take them back so the establishment will try to sell them for less. I may or may not use enforcement action however I will report my findings to the Department of Revenue. Mr. Beauregard asked the Board Members if they had any questions regarding the compliance checks. Mr. Beauregard explained that in the 32<sup>nd</sup> Surgeon General's Report it states that even though today's smokers smoke fewer cigarettes than 50 years ago, they are at a higher risk of developing lung cancer due to increased levels of nicotine and chemicals inhaled while smoking. The report also states that cigarette manufacturers have altered the design of cigarettes, which can significantly increase the amount of nicotine a person receives while smoking, making them more addictive. Mr. Beauregard talked about CVS removing all tobacco products from their shelves nationwide. Mr. Beauregard provided the Board with a list of municipalities that ban tobacco sales in pharmacies and explained that 45.7% of the State's population live in the listed municipalities.

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

The Board Members thanked Mr. Beauregard for his presentation.

**Open Microphone**

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

No one was present for open microphone.

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

The Board adjourned at 8:05 p.m.

Respectfully submitted,

Sandra Giroux  
Secretary

Joanne M. White  
Recording Clerk