

BOARD OF HEALTH MINUTES
June 9, 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

Mrs. Giroux made a motion to accept the Meeting Minutes of May 12, 2014 as presented. Mr. Kane seconded. Four (4) voted in favor, one (1) vote abstained (Marie O'Rourke).

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 May are included in the Board's package.

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

Mr. Berube explained that Gary returned from hip replacement surgery the week of May 20th and has been working part-time with restrictions. As of June 9, 2014 Gary has received authorization to return to work full-time with no restrictions. Most of Gary's report consists of septic system reviews, food service application reviews, building permit review and approvals and report writing for projects

that he is currently working on. Gary will resume his normal activities and conduct inspections this week.

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

Mr. Berube explained that Gary reviewed the plan for a Special Permit Application for the proposed wireless telecommunication installation on the smokestack at 71 Faulkner Street. Mr. Berube explained that he cannot recommend approval of this project based upon a list of concerns that have been submitted to the Planning Board. The first concern is that documentation of compliance with FCC emissions exposure regulations should be provided considering the proximity of the proposed facility to the tenants of 71 Faulkner Street, the abutting residential neighborhood at Garden City, The Faulkner kindergarten and the employees of Pace Industries all of whom may be adversely affected by this project. The second concern is regarding the potential noise that will be generated by the rooftop mounted HVAC units and emergency generator and the disruption the noise may cause for the nearby residences. Therefore, at this time I cannot recommend this project.

Mrs. O'Rourke asked why do they want a smokestack.

Mr. Berube replied the proposal is to install a cell tower on the smokestack.

Mrs. O'Rourke stated the next activity 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. Christine has not had a lot of activity because she is trying to use up her vacation time before July 1, 2014.

Mrs. O'Rourke stated that she has received a few complaints from residents because Christine's schedule is not consistent every week. Mrs. O'Rourke asked why Christine does not have set days and hours.

Mr. Berube replied that he allows Christine to have a flexible schedule because of her family. Sometimes I adjust her schedule so that she can attend meetings or work on projects for me. Christine's schedule is posted in the Board of Health office.

Mrs. O'Rourke requested that Christine's schedule be posted on the Town's website.

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

The Board Members did not have any questions.

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

Mr. Reader asked about the complaint at 188 Allen Road.

Mr. Berube explained that junk and debris has been dumped in the rear of the property. At this time approximately 85% of the debris has been removed. The owner requested an additional week to completely clean up the property. Additional time was granted by the Clerk Magistrate.

Mr. Berube explained that the owner of 11 Blades Circle has cleaned up his property however there is an issue with a dam on his property. There is a dam on his property that he has altered and impounded a stream and made a pond. The owner has given the town permission to go on his property and resolve the dam situation.

Mr. Reader asked has the situation been taken care of.

Mr. Berube explained that the plan is to lower the water in the pond gradually so that by the fall it will be at an acceptable level.

Mrs. O'Rourke asked what the status of 78 Pinedale Avenue is.

Mr. Berube explained that Phavy went to court and the judge did not want to put the family out of their home. The judge gave Mr. Mitchell an additional two (2) weeks to find a place to live.

Mrs. Giroux stated that this has been going on since 2010. Hasn't Mr. Mitchell had enough time to find a place to live? How can this keep going on?

Mr. Berube explained that a new judge has been handling the case. This judge seems to be willing to take further action.

Mrs. O'Rourke asked what happened in court on June 5, 2014.

Mr. Berube replied that on June 5, 2014 the judge gave Mr. Mitchell additional time until June 16, 2014 to vacate the premises unless he can come up with the money for the sewer connection.

Mrs. O'Rourke asked what the status of 7 Woodbury Road is.

Mr. Berube replied that the sale of the house has not been confirmed.

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

Mr. Reader asked if the fire problem on Autumn Street caused by hoarders.

Mr. Berube replied yes however there is an electrical problem.

Mr. Reader asked are they living in the house.

Mr. Berube replied no, the Fire Department put them up in a hotel.

Mrs. O'Rourke asked about the complaint at 8 Nickerson Drive regarding the goats that are being raised on the property.

Mr. Berube explained the complaint was forwarded to the Building Department because it is a zoning violation. The residents are raising goats for medical reasons for their children. The Board of Health will monitor the situation for any nuisance complaints.

Mr. Grady informed the Board that O'Connor's Hardware, 446 Boston Road is selling chickens.

Mr. Kane asked about the failed septic system at 413 Treble Cove Road.

Mr. Berube explained that the owner has contacted the Department of Public Works regarding a sewer connection.

Mr. Kane asked are they pumping the system on a regular basis.

Mr. Berube replied that the owner has hired Dresser, Williams & Way, Inc. to draw up the proposed plans for the sewer extension.

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

The Board Members did not have any questions.

Shaffer Landfill Solar Project

Mrs. O'Rourke stated the next item on the agenda is the Shaffer Landfill Solar Project.

A copy of Geosyntec Consultants most recent Shaffer Landfill NPL Site – Solar Development Monthly Construction Status Report has been included in the Boards package.

Mr. Berube explained that the project is near completion. The final walk-through for Array 1 was conducted on May 14, 2014 by the United States Environmental Protection Agency, MassDEP, the Building Commissioner, Mark LaLumiere, the Director of Public Health, Richard Berube, Director of Planning, Tony Fields, various consultants and contractors. Urban Green Technologies has maintained the integrity of the caps. The "as-built" plans have been submitted and are being reviewed by BETA Group.

Mrs. O'Rourke stated that she thought the panels were going to be angled.

Mr. Berube replied that the panels are angled. They have done a very good job. Start-up is expected to occur mid June 2014. Urban Green may be coming before this Board with a proposal to construct another Solar Project at the old General Latex Property on 200R High Street.

Mrs. Giroux asked have any of the neighbors complained.

Mr. Berube explained that a couple of the neighbors complained about the structures on top of the cap.

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

The Board Members did not have any questions.

Central Mass Mosquito Control Update

Mrs. O'Rourke stated the next item on the agenda is Central Mass Mosquito Control Update.

Mr. Berube explained that Central Mass Mosquito Control Project (CMMCP) has been treating areas throughout the community. CMMCP is treating all the catch basins in town. A copy of the CMMCP's schedule is posted on the Town's website. Warming temperatures coupled with standing water from spring rains have resulted in the season's first emergence of adult mosquitoes. Residents can request spraying in their neighborhood by calling 508-393-3055.

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

The Board Members did not have any questions.

7:15 p.m. New Locust Realty Trust – 200 Nashua Road – Request a Variance for work within 100 feet of the Flood Plain

Mrs. O'Rourke stated the next item on the agenda is New Locust Realty Trust, 200 Nashua Road requesting a Variance for work within 100 feet of the Flood Plain.

Mr. Lees presented the Board Members with a large scale drawing of the proposed single family dwelling at 200 Nashua Road.

Doug Lees, Project Engineer, Land Engineering & Environmental Services, Inc. representing New Locust Realty Trust identified himself. Mr. Lees explained that this is an existing lot on Nashua Road that has been part of the 1928 Rio Vista subdivision plan. The applicant proposes to construct a new 26 foot by 36 foot single family home on the undeveloped lot. The front of the lot is bisected by a jurisdictional wetland area. The proposed work will be done twenty-five (25) feet from the Green Engineering Flood Pain (GEFP). The applicant is requesting a variance from the requirement for a two (2) foot separation from the high groundwater table. The dwelling will be located on a steep slope. The back corner of the house will be six (6) feet into the existing grade and the front corner of the house will be one and one half feet above the existing grade. The proposal is to install a foundation drain around the house. Mr. Lees pointed to the plans and explained how the foundation drain would provide additional protection and mitigate any potential drainage problems.

Mrs. O'Rourke asked if there was going to be a garage.

Mr. Lees replied the house is going to be a split level. The garage will be at the same grade as the basement floor.

Mr. Reader asked if the proposed dwelling would be connected to town sewer.

Mr. Lees replied yes, the proposed will be connected to town sewer and town water.

Mrs. Giroux asked if there would be an elevated deck out back.

Mr. Lees replied yes, the deck would be located at the level of the first floor.

Mrs. O'Rourke asked what is the size of the lot.

Mr. Lees replied 10,295 square feet.

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

Mr. Kane asked has the issue with the Conservation Commission been resolved.

Mr. Lees explained that Mass Department of Environmental Protection issued a Superseding Order of Conditions allowing the project to move forward. The Conservation Commission has not issued their Order of Conditions yet.

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

Mr. Berube explained that he has gone over this plan with Mr. Lees on several occasions and this is the best plan that would work on this lot. Mr. Berube explained that because of limited access to the property a deephole test could not be done that is the reason for the request for the variance. There will be no work or filling within the Green Engineering Flood Plain (GEFP). The foundation drain will help mitigate any potential drainage problems. I recommend granting the variance requests.

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

Lauren Graham, 21 Juniper Street, identified herself. Ms. Graham asked Mr. Lee if he is the builder or the homeowner.

Mr. Lees replied that he is the engineer that surveyed the property and drew up the plans.

Ms. Graham asked is the proposed home going to be located on the right rear corner of the lot. Is the variance you are requesting because of the height of the foundation based on the water?

Mr. Berube replied the proposed dwelling is going to be constructed on the right rear corner of the lot because there is a finger of flood plain that cuts across the front of the lot. We are trying to keep away from the flood plain.

Ms. Graham asked will you be cutting down a lot of trees. Ms. Graham asked is the owner going to live in the home or is he building it to sell.

Mr. Lees explained that the owner is going to sell the house.

Mr. Berube explained that they will not remove all of the trees because of the Superseding Order of Conditions.

Ms. Graham asked if the setback is a variance request.

Mr. Lees replied no. Mr. Lees explained the setbacks and the zoning by-laws to Ms. Graham.

Ms. Graham asked is this the last step before construction will begin and what is the time frame for when the construction will begin.

Mr. Lees explained that there are still issues with the Conservation Commission. Even though DEP has issued the Superseding Order of Conditions, the Conservation Commission has jurisdiction over the wetland by-law.

Mrs. Giroux made a motion to grant a variance for work within 100 feet of the flood plain at 200 Nashua Road contingent upon the Conservation Commissions approval, DEP approval and usage of the foundation drain.

Mr. Reader seconded.

Mr. Lees stated that the applicant does not need Conservation approval because of DEP's Superseding Order of Conditions. The Conservation Commission did not meet the twenty-one (21) day limit to apply for an appeal. They went beyond the time frame. We filed an appeal. We do not need Conservations approval.

Mr. Berube explained that the applicant has a Superseding Order of Conditions from DEP. There is an ongoing litigation with the Conservation Commission. We should not tie the Board of Health's decision into the Conservation Commissions decision.

Mrs. Giroux made a motion to modify the motion and remove the stipulation "contingent upon the Conservation Commissions approval".

Mrs. Giroux made a motion to grant the variance of the Board of Health Rules and Regulations, Chapter 5, Section 5.5.005 (1) (2) in order to construct a single family dwelling and work within twenty-

five (25) feet of Flood Plain and Chapter 5, Section 5.2.004 relative to the two (2) foot separation to the high groundwater table from the basement floor at 200 Nashua Road based on the following findings of fact and pursuant to the following conditions:

FINDINGS OF FACT

- 1) The work described in the applicant's request is within an area subject to protection under the Billerica Health's Rules and Regulations, Chapter 5, Section 5.5.005 (1) (2).
- 2) The applicant proposes to construct a single family dwelling with an attached deck and associated driveway and utilities on a 10,295 square foot undeveloped lot of land on Nashua Road. A finger of Green Engineering Flood Plain (GEFP) extends along the front of the property parallel to Nashua Road. The proposed house and driveway will be located respectively forty-nine (49) feet and twenty-five (25) feet away from the GEFP. The site does not fall within the FEMA Flood Plain. There will be no work or filling within the Flood Plain. The proposed dwelling will be serviced by town water and sewer.
- 3) The front of the site is bisected by a jurisdictional wetland which prevents access to the upland portion at the rear of the property for deephole testing to determine the seasonal high groundwater table elevation. The applicant proposes to install a foundation drain as an alternative and to mitigate potential drainage problems.
- 4) The Board of Health has determined that the actions proposed by the applicant are adequate measures to protect the public health and environment and complies with the intent of Board of Health Rules and Regulations. Further, approval of the applicant's request will not be detrimental to the public health and environment.

CONDITIONS

Standard conditions number 1, 2, 3, 4, 5, 6, 9, 10, 11, 12, 13, 14, 15, 25 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 Land Engineering & Environmental Services, Inc. dated July 5, 2012 and revised to April 29, 2014 and stamped by Douglas E. Lees, RPE#40930.
- B) Erosion and sediment control measures shall be implemented and maintained in all areas disturbed by construction activity including but not limited to construction and waste material storage areas. Erosion and sediment control structures shall be installed and inspected by the Board of Health prior to beginning construction.

Mr. Reader seconded. So voted unanimously.

7:25 p.m. Hino Vargas – 1 Lombard Street – Request a Waiver of Regulations

Mrs. O'Rourke stated the next item on the agenda is Hino Vargas, 1 Lombard Street, requesting a Waiver of Regulations.

Hino Vargas, 1 Lombard Street, Billerica, identified himself. Mr. Vargas explained that he would like to install an above ground swimming pool.

Mr. Berube explained that Mr. Vargas applied for a building permit to install an above ground swimming pool. The Board of Health notified him that his property falls entirely within the flood plain and he would have to come before the Board for approval. There is no way that he can provide compensation. The Board has granted similar waivers in the past with the stipulation that if the pool creates a problem the pool could be taken down.

Mrs. O'Rourke asked if Mr. Vargas is on town sewer.

Mr. Berube replied yes. Mr. Vargas purchased the property that had a number of issues.

Mrs. O'Rourke asked what kind of issues.

Mr. Berube replied there had been a lot of dumping on his property. Mr. Vargas brought in a dumpster and cleaned up the property. Mr. Vargas has made a great improvement to the property.

Mrs. O'Rourke asked how long has Mr. Vargas lived at 1 Lombard Street.

Mr. Vargas replied four (4) years.

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

Mrs. Giroux asked how wet does your property get. Does it flood?

Mr. Vargas explained that Conservation told him that his property was 100 feet from the wetland boundary. They marked it.

Mrs. O'Rourke asked how much water do you get on your property.

Mr. Vargas replied that the last time he got water was when he bought the property in 2009.

Mr. Berube asked how much water was on your property at that time.

Mr. Vargas replied about six (6) inches of water.

Mr. Berube explained that he probably gets water in the back yard and wraps around the side of the house. The front of his house and the front yard is probably the driest portion of his property.

Mr. Vargas explained where the water comes up on his property. Mr. Vargas stated that Garrison's Restaurant sometimes uses his property for parking.

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

Mr. Berube reiterated that in the past the Board has granted similar waivers. The pool can be removed if it creates a problem.

Mrs. Giroux made a motion to grant a Waiver of Regulations of the Board of Health Rules and Regulations, Chapter 5, Section 5.5.005 (1) to allow the installation of a twenty-one (21) foot above ground pool in the flood plain located at 1 Lombard Street 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 property located at 1 Lombard Street and further described as Assessor's Plate 31, Parcel 80-1 falls within the Green Engineering Flood Plain as identified on the Green Engineering Flood Plain Map #52. Also, the site falls within a FEMA Special Flood Hazard Zone AE.
- 3) The applicant proposes to install an above ground pool. The proposed structure can be removed if it creates a flooding issue.
- 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 2, 4, 6, 10, 11, 12, 15 and 25 in accordance with the Board of Health Regulations and Special Conditions:

- A) The above ground pool shall be located as shown on the plan submitted and approved by the Board of Health.
- B) In the event, the pool creates a nuisance or flooding problem the pool shall be removed immediately upon notification by the Board of Health.

Mr. Kane seconded. So voted unanimously.

7:30 p.m. Hearing For Revised Rules and Regulations Regarding the Flood Plain

Mrs. O'Rourke stated the last item on the agenda is a hearing for the revised Board of Health Rules and Regulations regarding the Flood Plain.

Mr. Berube explained that FEMA has produced new flood studies for the Concord and Shawsheen River. The new Flood Insurance Rate Maps (FIRM) will go into effect on July 7, 2014. In order for the Town to remain comply with the National Flood Insurance Study we have to adopt some updates to our regulations. A similar update was done in 2010. We have to update the regulations to reflect the new Flood Study Maps.

Mr. Grady asked if the new maps were available for the public.

Mr. Berube stated that they are online. Mr. Berube explained that there is a significant change to the flood study for the Concord River. The flood elevations have gone up on average two (2) feet so they are more in line with the Green Engineering Flood Plain map. In accordance with the legal requirements, the public hearing has been advertised for the past two (2) weeks in the Billerica Minuteman.

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

The Board Members did not have any questions.

Mr. Reader made a motion to adopt the new changes to Chapter 5 as proposed.

Mr. Grady seconded. So voted unanimously.

Open Microphone

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

No one was present for open microphone.

Mrs. Giroux asked Mr. Berube about the status of her complaint about smoking near the entrance of the building where she works at 574 Boston Road. Employees are smoking close by the door and the smoke is migrating into the lobby.

Mr. Berube explained that he contacted Ron Beauregard, Tobacco Control and as of this time he has not heard from him. The smoking area is supposed to be far enough away from the building so that the smoke does migrate into the building or the lobby. We have No Smoking signs in the Board of Health office that can be provided to anyone that needs them. We do not have any signs that state a Designated Smoking Area.

Mrs. O'Rourke requested that a sign be posted by the side door of the Town Hall that faces Good Street because she has seen people smoking near the doorway and the smoke migrates back into the building.

Mrs. Giroux requested a smoking sign for the office building where she works because employees are smoking right outside the building.

Mr. Berube explained that the regulations do not state a specific distance away from the building. An individual could be smoking twenty-five (25) feet away from the building and the smoke could still go into the building or into the pathway of anyone walking into the building.

Mr. Reader stated that we do not allow smoking outside a building how can we allow smoking in private clubs.

Mr. Berube replied that is something for the Board of Selectmen to address because they regulate private clubs in town. It is in their purview.

Mr. Reader asked could an article be placed on the Town Meeting Warrant regarding the smoking in private clubs.

A discussion was held on smoking in private clubs.

Mr. Berube explained that private clubs can decide if they want to be smoke free.

Mr. Kane stated that smoking in private clubs is theoretically under the Board of Health's authority because private clubs have employees. A member can choose to join or not join a private club. Anyone that is employed by a private club is exposed to the same hazards as a waitress. Many places have done this through the Board of Health because they have employees and therefore they are creating a hazard to their employees.

Mr. Giroux stated that she thought private clubs were exempt. A person knew when they applied for the job that smoking was allowed in the club. Private clubs are allowed to have a cigarette machine. They have different rules for private clubs.

Mr. Berube stated that the Board of Selectmen have the authority to regulate smoking in private clubs.

Mr. Kane read that in Athol, MA a Case Law in 2006 stated that the Board of Health in Massachusetts has the authority to prohibit smoking in private clubs.

Mrs. Giroux stated that she thought when the Board reviewed the Massachusetts laws that there was something that stated private clubs were exempt.

Mrs. Giroux asked Mr. Berube if he could contact Ron Beauregard and update the Board at the next meeting.

Mr. Berube agreed to update the Board at the next meeting.

Mr. Grady made a motion to adjourn. Mr. Reader seconded.

The Board adjourned at 7:50 p.m.

Respectfully submitted,

Sandra Giroux
Secretary

Joanne M. White
Recording Clerk