

BOARD OF HEALTH MINUTES
September 8, 2014

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

ACCEPTANCE OF MINUTES

Mr. Reader made a motion to accept the Meeting Minutes of August 4, 2014 as presented. Mr. Grady seconded. So voted unanimously.

BOARD OF HEALTH BUSINESS

Health Department Activity Reports

Mrs. Giroux 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 August are included in the Board's package.

Mr. Berube stated that the Public Health Nurse, Christine West continues with the Communicable Disease Case Reporting/follow-up and out-patient activity. Christine has scheduled the flu clinics for Wednesday, October 15, 2014 at the Council On Aging from 9 a.m. to 11:30 a.m. for ages 60 and older and Saturday, October 18, 2014 at the Town Hall for ages 18 and older. The flu clinic schedule is posted on the Town of Billerica website and in the Billerica Minuteman. Mr. Berube explained that in 2015-2016 the Massachusetts Department of Public Health (MDPH) will be very strict on how much flu vaccine local Boards of Health will receive. We will have to purchase our own supply,

**BOARD OF HEALTH MINUTES
SEPTEMBER 8, 2014 PAGE 2**

however we will be able to bill the insurance for the vaccine and administration cost. Presently, we bill for the administration cost only since the vaccine is free.

Mr. Grady asked did MDPH explain why they are going to make that change.

Mr. Berube replied that MDPH has been talking about this for the past several years because of the decrease in participation. We have seen a decrease in participation since CVS, Walgreen's, Rite-Aid and other pharmacies have been giving out the vaccine.

Mrs. Giroux asked how much of an increase in the budget will that be.

Mr. Berube replied that we currently have a revolving account for the reimbursement of the flu vaccine so we will use that account for the purchase of vaccine. Also included in the Boards package is a copy of the information regarding the Ebola Virus Disease that was requested last month.

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

Mrs. Giroux requested an update of the Respiratory Virus that is affecting children on the west coast.

Mr. Berube replied that Christine is currently working on that and will have a report available at the October 6th Board of Health Meeting.

Mrs. Giroux stated the next report is from Health Agent, Gary Courtemanche.

Mr. Berube stated that Gary is present to answer any questions that the Board may have. Also included in Gary's report is a brochure regarding Commercial Organic Waste Ban for food service operations.

Mr. Kane asked if the threshold of 4,000 meals per week would be implemented in restaurants.

Mr. Courtemanche explained that studies have shown that fast food establishments do not generate as much organic waste as full service restaurants. The only full service restaurant in Billerica that would possibly serve more than 4,000 meals a week would be the 99 Restaurant on the Middlesex Turnpike. The Department of Environmental Protection (DEP) will be implementing the Commercial Organic Waste Ban regulation for supermarket food service operations. Most of the supermarkets will be required to have a plan in place. Market Basket is currently working with DEP on their SOP. Market Basket already has the barrels in place. The food waste from Market Basket will be going to a pig farm.

Mr. Kane asked how much is 4,000 meals per week equal to in waste.

Mr. Courtemanche explained that it is based on the number of bags of garbage that they will create per day.

**BOARD OF HEALTH MINUTES
SEPTEMBER 8, 2014 PAGE 3**

Mr. Grady asked are the barrels going to be located near the regular dumpsters.

Mr. Courtemanche replied no, the barrels will be in a separate location. Market Basket will provide the Board of Health with their SOP's. The barrel will not be allowed to stay in the facility for more than seventy-two (72) hours. They may need more than three (3) pickups per week.

Mr. Grady asked will DEP implement the regulations across the state so that it will be consistent.

Mr. Courtemanche replied yes. The person from DEP will be working with all the supermarket chains across the state. The supermarkets need to be certified to allow them some flexibility as to what goes into the food waste. If they don't become certified they still have to comply with the regulations.

Mrs. O'Rourke asked if it was mainly food.

Mr. Courtemanche replied yes, however flowers are included.

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

Mrs. Giroux stated the last report is from Health Agent, Phavy Pheng.

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

Mr. Berube explained that he has been working with the Town Manager and the Conservation Commission regarding the dam at 11 Blades Circle. The Town of Billerica has engaged the services of BETA Group to provide a hydrologic and hydraulic study of the impact of the dam. We could possibly have a public hearing on this matter at the next Board of Health meeting. The proposal is to remove the dam this fall while water levels are low.

Mr. Grady asked about the status of 7 Woodbury Road.

Mr. Berube explained that the closing date for the sale of the property has been moved to September 12, 2014. I have spoken to Mr. Turner, the potential buyer and he told me that as soon as he has finalized the sale he was going to file for a building permit to demolish the existing house and construct a new house.

Mr. Berube explained that a sewer connection permit has been pulled for 78 Pinedale Avenue. I have spoken with Jim Heider, the Disposal Works Installer and he plans on starting the work on September 9, 2014. The neighbor Mrs. McLaughlin will have a sewer stub in case she would like to connect to the municipal sewer system.

Mr. Berube explained that 12 Autumn Street has been sold and the property is being redeveloped.

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

Proposed 2015 Board of Health Meeting Schedule

Mrs. Giroux stated the next item on the agenda is the 2015 Proposed Board of Health Meeting Schedule.

Mr. Berube requested that the Board Members review the 2015 draft meeting schedule and if there are any issues please contact the Board of Health office. If there are no issues with the schedule the Board can vote on the schedule 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.

Fluoridation in Billerica Water Supply

Mrs. Giroux stated the next item on the agenda is the Fluoridation in Billerica Water Supply.

Mr. Berube explained that Billerica has received the 2013 Water Fluoridation Quality Award from the Centers for Disease Control and Prevention for its consistent and professional adjustment of the water fluoride content to the optimum level for oral health for 12 consistent months. Also included is a memo from the Department of Public Works Director, Abdul Alkhatib to the Town Manager, John Curran regarding the need for fluoridation in the town's water supply.

Mrs. Giroux asked the Board Members if they had any questions.

The Board Members did not have any questions.

Mosquito Control Project Update

Mrs. Giroux stated the next item on the agenda is the Mosquito Control Project Update.

Mr. Berube explained that we are entering into the highest risk season where more protection is necessary. This is when the risk for West Nile Virus is at its highest. If you are out at dusk you should exercise caution by using repellents and wearing long sleeved shirts and long pants whenever possible. The standard residential spraying program will end in August when cooler night time temperatures tend to predominate. Spraying is not allowed until after sunset and is prohibited at temperatures below 50 degrees.

Mrs. Giroux asked the Board Members if they had any questions.

The Board Members did not have any questions.

Tobacco Control Program Update

Mrs. Giroux stated the next item is the Tobacco Control Program Update.

Mr. Berube explained that Ron Beauregard, Program Director for Healthy Communities Tobacco Control Program is currently conducting compliance checks in Billerica. There was one sale of tobacco products at the 7-Eleven Store located at 814 Boston Road. The fine has been paid. Ron will be present to give a full report at the October Board of Health Meeting. Ron has forwarded a memo from the Town of Foxboro where they have joined a number of other communities in raising the age of selling tobacco or nicotine-delivery products from eighteen (18) to twenty-one (21). Andover is the latest community to join in raising the age to purchase tobacco products. Mr. Berube asked the Board Members to give this some consideration. Twenty-nine (29) communities have raised the age to purchase tobacco products.

Mrs. Giroux asked the Board Members if they had any questions.

The Board Members did not have any questions.

7 Woodbury Road

Mrs. Giroux stated the next item is 7 Woodbury Road.

Mr. Berube explained that as mentioned earlier, Scott Jamison, son of Ms. JoAnn Jamison has not been cooperative and forthcoming with information regarding the sale of the property. I have reached out to the buyer, Mr. Turner. The closing date has been moved to September 12, 2014. As soon as Mr. Turner purchases the property at 7 Woodbury Road, he plans on applying for a building permit to demolish the existing house. Mr. Turner promised to keep us informed of what transpires.

Miscellaneous

Mr. Berube stated that he has one last item that he would like to bring to the attention of the Board. Mr. Berube explained that a couple of years ago the Board granted a Waiver of Regulations for work within the flood plain at 129 Concord Road. There was a release of perchlorate and part of the work that was approved was to clean up the perchlorate in the ground water. We gave approval for the installation of injection wells. The treatment is still ongoing. I received a written request from J. Andrew Irwin requesting an extension for the continued operation of their remedial treatment and monitoring program which includes injection and monitoring wells located within the flood plain of the Concord River.

Mrs. O'Rourke asked has the Board approved an extension before.

Mr. Berube replied no, this is the first request from Irwin Engineers.

Mr. Kane commented that they are making a good faith effort and the work is in progress.

Mr. Berube replied that this work is under the Massachusetts Contingency Plan. The work is necessary. They are treating the perchlorate in the ground water. It will probably take 2-3 more years to complete the cleanup.

Mr. Kane stated that the cleanup is in progress. It is just a matter of how long it will take to finish the cleanup.

Mrs. Giroux asked the Board Members if they had any questions.

The Board Members did not have any questions.

Mr. Kane made a motion to grant the extension of the Waiver of Regulations #12-018 for 129 Concord Road for a period of three (3) years. The Order of Conditions for the Waiver of Regulations shall remain in full force and effect.

Mr. Reader seconded. So voted unanimously.

7:15 p.m. Stephen J. McGarry – Market Street – Appeal Hearing for Notice of Violation and Order for Correction

Mrs. Giroux stated the first hearing is Stephen J. McGarry, requesting an Appeal Hearing for Notice of Violation and Order for Correction for Market Street.

Stephen J. McGarry, 46 Chatham Road identified himself. Mr. McGarry explained that he medically retired in July 1997 and purchased the property at Market Street in 1997. The property was advertised in the Boston Globe by the owner as a buildable lot. I purchased the property with the intent to construct a new home which would be conducive to my disabilities. Unfortunately the property is directly in the flood plain. The previous director, John Morris informed me that I would have to apply for a variance and it would not be an easy project. I put the project on hold until 2012. I found a Billerica builder who was interested in building the property. I started the process of going forward with a Notice of Intent with the Conservation Commission and the Board of Health. I ran into a problem regarding a fence with the neighbor at 7 Market Street. Mr. Berube recommended that I resolve the fence issue with 7 Market Street before going forward. The owner of 7 Market Street had extended their fence well onto my property. I tried to resolve this issue in 2013. I went to the owner of 7 Market Street and told them that I found a builder that was going to try to build on this property. She told me that I was never going to be able to build on this property because it is in the wetlands. Their fence is twenty-nine (29) feet onto my property. I offered to take the fence down if she did not have the resources to take the fence down. She told me that she had to think about it. Two (2) weeks went by and she was still irate about it and did not want to take the fence down. In July 2013 we took the fence down. The owner of 7 Market Street called the police. Mr. Berube, David Lenzie and the Police came to the site. The builder and I had already taken down the portions of the fence that were on my property and stacked it on their property. Both parties agreed (myself and 7 Market Street) that if I had the property surveyed and their fence was on my property, they would take it down. I put the fence back up to make the

**BOARD OF HEALTH MINUTES
SEPTEMBER 8, 2014 PAGE 7**

situation amicable. After the survey was done they said they did not want to take the fence down. The reason why I am here today is because on the other side of my property in early 2014 someone dug a trench on my property to divert the groundwater directly into my property. I contacted the Highway Department and asked them if they did it. They replied no. Mr. Berube sent one of his employees out to talk to the neighbors. Mr. Berube informed me that his Health Agent did not get any positive feedback from the neighbors. I asked Mr. Berube if I could fill in the trench. Mr. Berube told me that I could fill in the trench. I asked Mr. Berube for a letter stating that I could fill in the trench. I had emergency surgery on my back and did not fill in the trench at that time. In July I threw three (3) barrels of sand into the trench to divert the water that was flowing onto my property. The neighbors said that I could not do that. I told them that I had permission from Mr. Berube. They called the Board of Health and one of the agents came out and inspected the situation. I told the agent that I had verbal approval from Mr. Berube. On Monday, I went to the Board of Health Office to see Mr. Berube and he told me that he did not say that I could fill in the trench. I guess there was a misunderstanding between Mr. Berube and myself. He told me that I would have to take out the fill and I would be getting a Notice of Violation in the mail. I received the Notice of Violation and an order to Cease and Desist and clean up out the trench. Since that time I have cleaned up the trench. I still have an issue with 7 Market Street. I am assuming that everything is okay with the Notice of Violation because I have not heard anything different. Since 7 Market Street has not taken down the fence that is encroaching on my property, I went to the Conservation Commission for guidance and they told me that they do not have the power to enforce the violation. They referred me to the Building Department. I filed a complaint with the Building Department. They looked into the matter and could not find a permit for the fence. 7 Market Street has an extended deck out back and no permits have been issued for the deck. They moved the fence and it is extended beyond their property in the flood plain. They also have two large sheds in the back of their property. I filed a complaint in December 2013 with the Building Department and did not get a response. The Building Department told me that they would have an answer within fourteen (14) days. After a month and a half I talked to the Building Department again and they told me there were no permits in the current pile and they would have to go into the archives. I waited another two (2) months and went to the Building Department again. They told me that they could not find anything in the archives and it is not their responsibility. It is the responsibility of the Board of Health. I filed a complaint with the Board of Health in April 2014. After an investigation by the Board of Health, I was told they do not have the authority it was the Building Departments jurisdiction. I would like to get this resolved now. There are flood plain and wetland violations at 7 Market Street and I am not getting any results. I looked for guidance from the Conservation Commission, the Building Department and the Board of Health and no one has accepted the responsibility to properly answer the complaints.

Mr. Reader stated that he did not think the Board was here to discuss 7 Market Street.

Mrs. Giroux asked Mr. Berube what is the Board here for tonight.

Mr. Berube replied that we are here to discuss the Notice of Violation and Order for Correction, dated August 4, 2014. That is the only issue that is before us tonight. Two (2) years ago when Mr. McGarry filed with the Board of Health some testing was done. Plans were developed for a septic system. From the beginning I made it very clear to Mr. McGarry that this was going to be an extremely

**BOARD OF HEALTH MINUTES
SEPTEMBER 8, 2014 PAGE 8**

challenging site and most likely would not get approval to develop this site. I also told him that he would need to get a variance from the Board of Health for any work within the flood plain. He would also need to get a Stormwater Management Permit from the Board of Health because of the drainage problems in this area and because of the presence of wetlands in this area he would be subject to approval from the Conservation Commission. Mr. Berube stated that enclosed in the Boards package is a copy of the Subsurface Sewage Disposal System Plan Review letter dated June 3, 2013. The memo lists the items that need to be addressed in order to complete the plan review process. Mr. Berube stated that also included is a copy of the Green Engineering Flood Plain Map showing Mr. McGarry's lot and 7 Market Street. Mr. McGarry's lot is 33-13 and is 75% in the flood plain. 7 Market Street is lot 24-6 and only the back corner is in the flood plain. At 7 Market Street there are no structures in the floodplain. I also included a copy of the proposed project. This plan shows 7 Market Street and the fence line encroaching upon Mr. McGarry's property. Mr. McGarry mentioned that when he was taking the fence down at 7 Market Street the police and I were called. We both visited the site. I told him that was not the proper way to do things. You should have contacted the neighbors first. I advised him that he should have contacted a lawyer and had him send a letter regarding the fence at 7 Market Street being on his property and given them a specified amount of time to take the fence down. You should have given them fair notice that you were going to take the fence down if they did not respond within a specified amount of time. Mr. McGarry mentioned that he had filed several complaints with the Board of Health regarding the trench that was dug out back. I discussed that with him and mentioned that is the way the drainage flows in this area. The water flows towards his property. That is one of the problems with trying to develop this property. The drainage problem is one of the issues that would have to be addressed. This neighborhood has severe drainage problems. There is no drainage in this area. I have seen times when this neighborhood has been under water and people have used boats. Anything that is done on his property can impact the neighbors and their septic systems. What Mr. McGarry did was extremely wrong to fill in the trench. He mentioned that he had received verbal permission from me to fill in the trench that is not true. Why would I tell him that he needed a variance from the Board for any work being done within the flood plain? Clearly Mr. McGarry misunderstood what I said to him.

Mrs. Giroux asked if the Board had any questions.

Mr. Reader asked who is the builder that was going to build on this property.

Mr. McGarry explained that the builder is William Landry a partner of a building firm in Wilmington. Mr. McGarry explained that he had two professional engineers handle this situation for the variance. When I talked to Mr. Berube about the trench, I stated that we would chalk this up as a misunderstanding.

Mr. Reader stated that he is not an engineer but it appears that this is not a buildable lot.

Mr. McGarry stated that when he purchased this lot he received a letter from Ruth Ann Bossi stating that it was a buildable lot. The builder stated that it is a nice piece of property. Mr. McGarry talked about the flood plain at 7 Market Street.

**BOARD OF HEALTH MINUTES
SEPTEMBER 8, 2014 PAGE 9**

Mr. Reader stated we are not here to discuss 7 Market Street.

Mr. McGarry stated that he would like to come to another hearing regarding 7 Market Street.

Mrs. Giroux replied that 7 Market Street is a separate issue.

Mr. Kane asked how big is this trench. Is this normal erosion from water coming off the street or is it a mechanical trench?

Mr. Berube showed the flood plain map and explained that after a severe rain storm the water ponds in that area and flows out. When Mr. McGarry filled in the trench, the water would go down Market Street impacting all the neighbors.

Mrs. O'Rourke asked if the trench was dug with a back hoe or a shovel.

Mr. McGarry replied that the trench was about twenty-four (24) inches wide and sloped right into my property.

Mrs. Giroux asked how long is this trench.

Mr. McGarry replied about twenty (20) feet.

Mr. Kane stated from the pictures provided by Mr. McGarry the trench looks like the size of a snow blower but I am not quite sure how a snow blower would dig a trench deep enough that would require being filled in.

Mr. Berube explained that Mr. McGarry did not just fill in the trench he dumped fill along his property line along the street.

Mr. Kane stated that the fill looks above grade as opposed to bringing back to existing grade it appears to be above grade more like a berm than just fill. Is that accurate?

Mr. McGarry replied that the trench is filled above grade. Mr. McGarry explained that the fill is about four (4) inches high and fifteen (15) feet long. Mr. McGarry showed Mr. Kane pictures that he had taken of the trench and explained that this is not the trench. This is to immediately block the flow of water.

Mr. Kane stated so you did not fill in the trench, you made a berm.

Mr. McGarry replied that he requested to fill in the trench. This is a temporary fix to stop the water from flowing into my property.

**BOARD OF HEALTH MINUTES
SEPTEMBER 8, 2014 PAGE 10**

Mr. Kane stated it sounds like whether Mr. Berube gave you permission or not to fill in the trench you have in addition to whatever action you were going to take for the trench, you built what appears to be a berm with the expressed desire and intent to divert water flow that normally would pass through your property diverting onto other property or in a different way. Is this what you said? Mr. Kane reiterated that the berm is beyond the scope of the trench with the intent of stopping water flow onto your property. Do you agree?

Mr. McGarry replied yes. It is a temporary fix until I could have the trench filled in. I only used 3 or 4 wheel barrels full of sand.

Mr. Kane stated so the berm was a temporary fix with the intent of stopping the water flow onto your property.

Mr. McGarry replied that my intent was to stop the flow of water and divert it somewhere else.

Mr. Kane stated that Mr. Mc Garry answered his question.

Mrs. Giroux asked if any abutter would like to speak. Please state your name and address and please stick to the issue of Mr. McGarry's property at Market Street.

Christine Goucher, 7 Market Street identified herself. Ms. Goucher explained that she previously owned the property that Mr. McGarry currently owns. Mrs. Goucher explained that she has lived there for 37 years. I bought the land with someone else. We tried to build on the lot and were told that the property was not buildable because it is in the flood zone. We kept the property for a while and then sold it. I put up the fence a long time ago for my kids and the dog. I told Mr. Mc Garry that we would take the fence down after the land was surveyed because we were not sure of the property line. My son asked him to notify us so that we could take the fence down ourselves. He started to take the fence down himself that is when we called the police. The police told him to put the fence back up because it is a civil matter. He is constantly down there looking to change the direction of the water flow. It is in the flood zone and is not buildable. He is trying to shift the water flow to my property. The other day he was down there with his bad back lifting tie-rods and lining them up along my property line. I feel like he is stalking me. One neighbor in our area has no place to put another septic system. When he first knocked on my door he told me that he was building a house for veterans.

Kim Garvey, 13 Market Street identified herself. Ms. Garvey stated that she was not notified about this meeting. In the future she would like a notice just like her neighbors. Ms. Garvey explained that she was the one who called the police and the Board of Health. Not only was he building a berm, he built the berm on town property (the paper street that abuts his property). We don't know where the soil came from. When it rained there was an oil slick that came off the dirt. There are sharp metal objects in the soil. Whenever there is a water buildup it is in front of the paper road at Broadleaf Street and Market Street. When the puddle builds up the water flows onto his property naturally. When the snow builds up the warm air gets underneath and the snow melts. Even though it looks like a trench it is the water that has made its own path and drained onto his property. Our neighborhood issue is when he messes with

**BOARD OF HEALTH MINUTES
SEPTEMBER 8, 2014 PAGE 11**

the natural flow of water it will destroy our yards, we will get water in our basements and some of us will have to replace our septic systems. The majority of us have 5,000 square foot lots. We don't have enough room to move our septic system to another area.

Mr. Berube explained that this is an appeal hearing for a Notice of Violation. Abutter notification is not required. If Mr. McGarry files for a variance all the abutters would have to be notified. The Conservation Commission held a hearing and that maybe what Ms. Garvey is referring to. A Notice of Intent (NOI) was submitted on August 26, 2013 to the Conservation Commission and because they were unable to work out issues with the compensatory flood storage area and compliance with buffer zone standards, the NOI was withdrawn on March 26, 2014.

Patrick Garvey, 13 Market Street identified himself. Mr. Garvey stated that he may be able to shed some light on how the trench got there. Mr. Garvey explained that in the winter the snow plow driver plows the snow and forces the snow into piles in that area because there is no other place to put the snow. That is how the trench got dug. Mr. McGarry brought in more than a couple of wheel barrels full of dirt. It was more like a pickup truck full of dirt. Until Mr. McGarry obtains the necessary permits to build, I would like the property left alone. If he has an issue with people going on his property I recommend that he put up a fence.

Terry Casey, 15 Market Street identified herself. Ms. Casey stated that the water puddles on her property. He is a sneaky guy. The water will take the easiest path. If he is allowed to build on his property we will all need boats. The snow gets piled up by the contractors because his property has always been just woods and there is no other place to put the snow.

Mrs. Giroux asked if anyone else would like to speak.

Mr. McGarry explained that the neighbors have stated that they did not dig the trench. It appears that it was done by the snow plow drivers because of the time frame. Then there was a spring thaw and a major snow storm after that. It was probably done by the snow plow truck. The town did not do it. When Richard Berube sent his agent to investigate, the neighbors did not own up to digging the trench. The trench wasn't there last fall. The issue is that I put in a berm to hold off the water from going into my property until I could fill in the trench, which I am not allowed to do.

Mr. Reader asked did you remove the fill.

One of the abutters stated that the fill was flattened.

Mrs. Giroux asked Mr. Berube if he had any questions.

Mr. Berube asked Mr. McGarry if he has complied with the Notice of Violation and Order for Correction. Mr. Berube stated that Mr. McGarry has ceased all activity however, he has not removed the fill.

Mr. McGarry replied the fill was already flattened.

Mr. Berube stated that you did not comply with the order.

Mr. McGarry stated that the town moved the fill into the woods.

Mr. Berube explained that it was by my order that the fill was taken care of because you did not take any action and I did not want to see the residents suffer. I spoke with the Department of Public Works Director and asked him to push the fill aside so that the water could seek its natural path.

Mr. McGarry stated that you did not give me a chance to respond and take care of it. It was done within a couple of days after we had spoken.

Mr. Berube stated that he was not going to wait until the next storm when the neighbors could have a problem. That is why I had the DPW take care of it. This is something that you should have addressed immediately.

Mr. Grady asked did you remove the fill from the trench.

Mr. McGarry explained that he has not done anything, the Town took care of it.

Mr. Grady stated you just answered my question. You have not done anything.

Mr. McGarry stated that he went to resolve the issue and noticed that the Town had flattened the fill.

Mrs. Giroux asked when did you go to remove the fill.

Mr. McGarry replied before I received the cease and desist order, probably a few days after the Town moved the fill.

Mr. Berube replied that you still haven't removed the fill. So you have not complied with this order. Do you understand this order?

Mr. McGarry replied yes.

Mr. Berube explained that you have stopped all the activity but you haven't removed the fill out of the trench.

Mr. McGarry replied that there isn't any fill in the trench.

Mr. Berube stated that Mr. McGarry has requested an appeal hearing for the Notice of Violation and the Board has heard from Mr. McGarry and the abutters. He has not complied with the order. He

**BOARD OF HEALTH MINUTES
SEPTEMBER 8, 2014 PAGE 13**

has stopped all activity however he has not removed the fill. I am requesting that the Board sustain the order and require that Mr. McGarry remove the fill. If Mr. McGarry does not know what I am referring to I will be happy to go there and show him what needs to be removed. As far as his other complaints, I feel that the Board of Health has dealt with those complaints appropriately. I have directed Mr. McGarry to see the Conservation Commission and the Building Department because they failed to do anything it is not the Board of Health's problem. I see no reason for the Board of Health to pursue those complaints.

Mrs. Giroux asked the Board Members if they had any other questions.

The Board Members did not have any questions.

Mr. Grady made a motion to sustain the Notice of Violation and Order for Correction and remove the fill within seven (7) days.

Mrs. O'Rourke seconded. So voted unanimously.

Mrs. Giroux asked Mr. McGarry if he had any questions and understood the order.

Mr. McGarry asked if he could file for a hearing for the other violations.

Mrs. Giroux told Mr. McGarry to take care of this situation first. If you have any questions call the Director, Richard Berube.

Mr. Kane informed the abutters that they could also file a complaint at the Board of Health office at any time.

One of the abutters asked will someone make sure the fill has been removed.

Mrs. Giroux replied yes. Mr. Berube will check it out.

Ms. Goucher explained that there are several stakes on his property and when something happens to one of the stakes he blames me. I feel like I am being harassed. I don't know what to do.

Mrs. O'Rourke stated that is a civil matter. There isn't anything that this Board can do.

Open Microphone

Mrs. Giroux asked if anyone was present for open microphone.

No one was present for open microphone.

Mrs. Giroux asked Health Agent, Gary Courtemanche how he made out with the complaint regarding Sweet Kiwi.

**BOARD OF HEALTH MINUTES
SEPTEMBER 8, 2014 PAGE 14**

Mr. Courtemanche explained that he received two (2) complaints from people that were buying yogurt in Sweet Kiwi, located in the Billerica Mall. The owner was hovering around them while they were making a yogurt with toppings. The owner picked up the toppings that were on the counter and had fallen on the floor and put them back in the containers. I visited the establishment on Monday, September 8, 2014 and the owner admitted to picking up the toppings and putting them back in the containers. I issued a one (100) hundred dollar fine and told him that he would be put on notice that if there is another violation he would have to appear before the Board.

Mr. Grady made a motion to adjourn. Mrs. O'Rourke seconded.

The Board adjourned at 8:15 p.m.

Respectfully submitted,

Marie O'Rourke
Secretary

Joanne M. White
Recording Clerk