

**BOARD OF HEALTH MINUTES**  
**December 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, Phavy Pheng, Health Agent, Christine Gualtieri, Animal Control Officer and Maureen Ray, Part Time Animal Control Officer.

**ACCEPTANCE OF MINUTES**

Mr. Kane made a motion to accept the Meeting Minutes of October 6, 2014 as presented. Mr. Reader 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 months of October and November are included in the Board's package.

Mr. Berube stated that the Public Health Nurse, Christine West held a Flu Clinic on Tuesday, November 25, 2014 from 4 p.m. to 6 p.m. in the Board of Health office. Fifty-four (54) residents came in for a flu shot. The flu clinic was requested by the Police Department at a meeting held in November. Christine continues with routine MAVEN reporting and follow-up activities. The most current Ebola Situational Awareness Report is included in the Board's package. A meeting was held with the Health Department, the Police Department and the Emergency Preparedness Coordinator, Bill Laurendeau to discuss the proper procedures to use for the Ebola Virus and infectious diseases.

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

Mr. Berube stated that Gary has conducted sixty-three (63) Food Service Inspections.

Mrs. O'Rourke asked what the seven (7) critical and the non-critical food violations at Chung King's Restaurant were.

Mr. Berube stated that he was not sure what the critical violations were. Rick Woo hasn't been spending a lot of time at the restaurant due to family matters. When Gary conducted his routine inspection he found seven (7) critical violations. There appears to be management issues when Rick is not there. As a result of the inspection an Administrative Enforcement Conference was held with the owner, Rick Woo and a plan for correction was issued. Chung King will be required to hire an approved Food Service Consultant and be subject to Special Inspections at the owner's expense for a period of six (6) months.

Mrs. Giroux asked could Gary send an email with the seven (7) critical food violations.

Mr. Berube replied yes.

Mrs. O'Rourke asked will the Food Service Consultant help with the management issues or just the kitchen problems.

Mr. Berube explained that the Food Service Consultant will set up procedures for the employees to follow and it will be up to management to make sure that the procedures are followed especially when Rick is not there.

Mr. Kane asked about the illegal food operation being conducted at 6 Kenmar Drive and has the operation been suspended.

Mr. Berube replied that the operation has been suspended.

Mrs. Giroux asked has the fine been paid.

Mr. Berube replied yes, the fine has been paid and Gary will monitor the situation. In speaking with other Health Directors this has happened in other towns, it is common problem with immigrant families.

Mr. Kane asked has a follow up visit been conducted.

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Mr. Berube replied that Gary is in the process of revisiting 6 Kenmar Drive to ensure that the operation has ceased.

Mrs. Giroux stated that she did not understand why the complaint regarding a dog that defecated in the aisle at Market Basket, 700 Boston Road could not be validated. Either it happened or it did not happen. Did someone clean it up or not?

Mr. Berube replied that Gary spoke with the front end manager who was on duty at the time and he did not have any knowledge of it happening, therefore Gary was unable to validate the complaint.

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

The Board Members did not have any questions.

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

Mr. Berube stated that Phavy was present to answer any questions the Board may have.

Mr. Berube explained that he spoke with Town Counsel regarding the demolition of the house at 7 Woodbury Road and Town Counsel gave me an ambiguous answer. Town Counsel stated that we could go forward with the demolition but it would be better if we got a court order. I spoke with the Housing Court and their response was that I should apply for receivership, which is a lengthy process. I spoke with the Attorney for 7 Woodbury Road and she has filed a petition with the court to appoint Scott Jamison as a personal representative of JoAnn Jamison's Estate. That should not take a long time. Then they will file for the sale of the property. Hopefully, this will be resolved by February 2015.

Mrs. Giroux asked is the buyer still interested.

Mr. Berube replied the original buyer, Mr. Turner is still interested.

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

Mr. Grady asked what the status of 18 George Brown Street is.

Ms. Pheng explained that the complaint was that the trash and debris migrated onto the street. The property has been cleaned up however they have not paid the fine so I filed it in court. The owner failed to appear in court. So a criminal complaint was issued.

Mrs. Giroux stated that the sewer connection at 78 Pinedale Avenue has finally been completed.

Mrs. Giroux asked about the outstanding order at 60 Bridle Road.

Ms. Pheng explained that she inspected the property at 60 Bridle Road and observed that the

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bank had put a lock on the door.

Mrs. Giroux asked if a re-inspection was done at 22 Kenmar Drive, Unit #210. The owner was advised to keep the Board updated.

Ms. Pheng explained that the owner stated that she would update the Board of Health.

Mr. Berube explained that the main problem was the son's behavior. The son no longer lives at 22 Kenmar Drive. No hazardous materials were found in the dwelling. The son was doing drugs in the dwelling.

Mrs. Giroux asked about the mold in the dwelling at 69 Marshall Street.

Ms. Pheng explained that Bank of American sold the mortgage to Bayview Loans Servicing, LLC and they have not responded. I issued an Order for Correction and they still have not responded.

Mrs. Giroux stated that we should take the next step.

Mr. Kane stated that this is a consistent problem with foreclosures. We send letters that go nowhere. We have a process to follow. If you issue an order and they have not responded then we have to issue a fine and keep following the process. It produces a better case if we go the receivership route. Then we have documentation that they have not responded to a letter or a fine.

Mr. Kane asked have the propane tanks at 15 Memory Lane been removed.

Mr. Berube explained that the property has been sold and is in the process of being renovated. The propane tanks have been removed.

Mrs. Giroux asked has John Clark, Town Treasurer, taken over the property at 58 Alexander Road.

Ms. Pheng explained that she spoke with Mr. Clark and one of the sons of the owner has come forward. Ms. Pheng stated that she will have an update next month.

Mrs. Giroux asked if the bulk items at 43 Pond Street and 28 Pondover Road have been removed.

Ms. Pheng replied that the items have been removed at both addresses.

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

The Board Members did not have any further questions.

**7:15 p.m. Town of Billerica – Sewer Contract 35 - Request Waiver of Regulations for work within the Flood Plain**

Mrs. Giroux stated the first hearing is the Town of Billerica, requesting a Waiver of Regulations for work within the Flood Plain for Sewer Contract 35.

Jack Troidl presented the Board members with large scale drawing of the proposed Sewer Contract 35.

Jack Troidl, Project Manager for Woodard & Curran identified himself. Mr. Troidl introduced Katie Rosa also of Woodard & Curran. Mr. Troidl explained that Sewer Contract 35 will include installation of approximately 31,000 linear feet of new gravity sewer in East Billerica. All manholes located within the Flood Plain will have a watertight frame and cover. There are no pump stations as part of this project. There will be 6,000 feet of sidewalk replacement and water main replacement work. The majority of the work will be in the street. Some of the work in the street crosses through the flood plain. Some of the easements are in the flood plain. Minimal impact will be temporary during construction. All areas will be restored to pre-existing conditions.

Ms. Rosa pointed to plans and explained the Green Engineering Flood Plain from 1973, the July 2014 FEMA Flood Plain and the highlighted streets were the sewer work would be done. Ms. Rosa also pointed to the Jones Brook crossing area. Most of the impacts will be temporary.

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

The Board members did not have any questions.

Mr. Berube explained that a small portion of the work falls within the FEMA/Green Engineering Flood Plain associated with Jones Brook. There will be no detrimental impacts to the Flood Plain. This project will help the residents that have been biding their time with failing septic systems and will be in the best interest of the environment.

Mr. Kane made a motion to grant a Waiver of Billerica Health Regulations, Chapter 5, Section 5.5.005 (1) (2) to allow the construction of public sewers in the East Billerica area within the Green Engineering Flood Plain and FEMA Flood Plain based upon the following facts and subject to the following conditions.

**FINDINGS OF FACT**

- 1) The work described in the applicant's request, and as per plan submitted and prepared by Woodard & Curran, Inc., dated September 2014 and revised to November 21, 2014 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 construction of sewers in the East Billerica area (Allen Road, Andover Road, Pondover Road, etc.) will improve public health and ground water protection.
- 3) All disturbed Flood Plain areas will be restored to pre-existing conditions therefore, any short term impacts are minor compared to the long term benefits.
- 4) It has been determined that the actions proposed by the applicant are adequate measures to protect public health and the environment and complies with the intent of the Board of Health's 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, 13, 14 and 15 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 Woodard & Curran, Inc. dated September 2014 and revised to November 21, 2014.
- B) All disturbed Flood Plain areas must be restored to pre-existing conditions.

Mr. Grady seconded. So voted unanimously.

### **7:30 p.m. Town of Billerica – Allen Road Roadway Reconstruction – Request to Reissue Approval for Project**

Mrs. Giroux stated the next hearing is the Town of Billerica, Allen Road Roadway Reconstruction request to reissue approval for the project.

Kelley Conway, Town Engineer for Billerica, identified herself. This project is a Massachusetts Department of Transportation (MassDOT) Roadway Reconstruction Project. The purpose of this project is to improve vehicular and pedestrian safety along the Allen Road corridor with a new signal, geometric and alignment improvements and major stormwater management improvements for the project area. In April 2010 the Board granted approval for the Waiver of Regulations for this project. However, the project has been delayed. I am requesting an extension of the Waiver of Regulations.

Mrs. O'Rourke asked how long do you want the extension for.

Ms. Conway explained that the project is going out to bid in March 2015. The project is a two (2) year project. We are anticipating that construction should be completed in November 2017.

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

Mr. Reader asked is this the project from Webb Road to Boston Road. Where will the new signal

be installed?

Ms. Conway replied yes. A signal will be installed at the intersection near Roy Brothers.

Mrs. O'Rourke asked will the bad curve be addressed.

Ms. Conway explained that there will be both horizontal and vertical changes on the road.

Mrs. O'Rourke asked if any land taking would be necessary.

Ms. Conway explained that is being worked on now. We are working with the appraiser and Town Counsel to complete the process.

Mrs. O'Rourke asked if the drainage on Arcadia Road is going to be addressed.

Ms. Conway explained that there is a significant detention basin on the property at 188 Allen Road and we are going to need a signature for an easement for a drainage basin.

Mr. Berube stated that a great deal of work has gone into this project. This project will improve public safety by correcting the substandard roadway conditions. The proposed stormwater management system will correct the existing drainage problems. Mr. Berube recommended reissuing the waiver without an expiration date in case any further problems arise and there are more delays.

Mrs. Giroux stated that she has a concern with an open ended expiration.

Mr. Grady stated that it would be better to have the project open ended so that they do not have to come back before the Board for another extension before the project is completed.

Mr. Berube suggested that the Board could approve a five (5) year expiration.

Mr. Reader agreed with an open ended expiration.

Mr. Kane stated that he likes a project to have some level of time commitment. The project is supposed to be completed in November of 2017, he would agree to an expiration date of July of 2018.

Mrs. Giroux stated that she would agree to a five (5) year expiration.

Mr. Reader made a motion to leave the reissuance approval open ended.

Mr. Grady seconded. Two voted in favor, three (3) opposed, (Marie O'Rourke, Dan Kane and Sandra Giroux).

Mr. Kane made a motion to reissue the Waiver of Regulations for the Allen Road Reconstruction

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Project #10-007 for five (5) years. This Waiver of Regulations will expire on December 8, 2019. All other conditions of the original waiver will remain in full force and effect.

Mrs. O'Rourke seconded. So voted unanimously.

**7:40 p.m. William Megow – 18 Marshbrook Road – Request Waiver of Regulations for work within the Flood Plain**

Mrs. Giroux stated the next hearing is William Megow, 18 Marshbrook Road requesting a Waiver of Regulations for work within the Flood Plain.

Doug Smith presented the Board with a large scale drawing of the proposed project at 18 Marshbrook Road.

Doug Smith, Soilsmith Designs, identified himself. Mr. Smith pointed to the plans and explained the Green Engineering Flood Plain, the FEMA Flood Plain and the wetlands. The entire property is in the Flood Plain. The Conservation Commission has approved this project. Four (4) test holes were done in a row on the upper part of the property. The two (2) test pits in the middle have the best soil to install a new septic system. There will be a mitigation flood plain compensation area. The mound for the septic will have the same cubic footage to mitigate. I met with Isabel and Rich onsite and we agreed that this was the best site for the septic system.

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

Mrs. O'Rourke asked if there was any sewer in that area.

Mr. Smith replied there isn't any sewer on Marshbrook Road.

Mr. Kane asked how high will the mound be.

Mr. Smith explained that the elevation at the bottom of the septic system is 98 so it is about two (2) feet thick. One (1) foot for the presby pipes and one (1) foot for the covering. So it will be about two (2) feet higher than the existing grade.

Mr. Kane stated that he is concerned that by changing the grade work would water be directed towards other properties.

Mr. Smith replied that nothing would happen.

Mrs. O'Rourke asked how old is the house.

Mr. Megow replied the house was built in 1924.

Mr. Smith pointed to and explained that the existing system is a cesspool and is about



seven (7) feet from the wetlands. This system will be a big improvement.

Mr. Berube explained that it is a failing septic system and this is the best place to locate the new system. Compensatory flood storage will be provided for any filling of the Flood Plain. The Board granted similar approval to 24 Marshbrook Road last year.

Mr. Grady made a motion to grant a Waiver of the Board of Health Rules and Regulations, Chapter 5, Sections 5.5.005 (1) in order to construct a septic system in the flood plain at 18 Marshbrook 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, Sections 5.5.005 (1) and 5.5.005 (5).
- 2) The applicant proposes the upgrade of an existing sewage disposal system found to be in non-compliance with the provisions of 310CMR15.000 the Massachusetts State Environmental Code, Title 5. The failing sewage disposal system services a single family dwelling on a property that is located almost entirely within the Flood Plain.
- 3) The work is necessary to correct the system failure and protect the public health, safety and the environment. The applicant proposes to provide mitigation work to compensate for any loss of flood storage.
- 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, 3, 4, 5, 6, 10, 11, 12, 13, 14, 24 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 Soilsmith Designs dated September 18, 2014, revised to November 18, 2014 and stamped by Douglas J. Smith, RS#1155.

Mr. Reader seconded. So voted unanimously.

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Mrs. Giroux stated the next hearing is Urban Green Technologies (UGT), Continued Hearing for a Variance request (Flood Plain) and Stormwater Management Approval at 200R High Street.

Urban Green Technologies provided the Board with drawings showing the layout of the solar panels for the proposed project at 200R High Street.

Mickey Marcus, Senior Scientist, New England Environmental, Inc. identified himself. Mr. Marcus introduced Jack Enos, Project Engineer with T. Ford Company. Mr. Enos is the contractor that will be doing the demolition work of the existing buildings. The Conservation Commission has granted approval for this project. The Planning Board discussion is still ongoing. Mr. Paradis from BETA Group is present to give an update on BETA Group's review of the project.

Phil Paradis, Project Engineer, for BETA Group identified himself. Mr. Paradis explained that BETA Group has provided a comprehensive review for the Conservation Commission, Planning Board and the Board of Health as applies to Stormwater Management. The site is more complex because it is bi-sected into quadrants of wetlands. There is also Green Engineering Flood Plain (GEFP) within the area and abandoned buildings that will need to be removed. In order to install the arrays all the wooded areas will need to be cleared. Stormwater Management will provide that erosion controls will be maintained during construction. There will be minimal impact that relates to Stormwater Management. BETA Group recommends that prior to the installation of the arrays, UGT will provide an as-built of Array C including spot grades to document that finished grades are less than or equal to existing grades within the GEFP. Three (3) culverts exist, two (2) of the culverts lead up to the Middlesex Canal and go underneath an existing railroad spur. The corrugated pipes have been in the ground for a long time and are in poor condition. The applicant proposes to remove two (2) of the culverts and restore the areas. A discussion was held about the spur line and the applicant will replace the culvert in kind. BETA Group is comfortable with that proposal. Mr. Paradis explained that the reuse of materials on the site needs to be approved by the Board of Health. The major issues of Stormwater Management, Flood Plain and the use of material have been addressed.

Mr. Berube asked is there a plan for the reuse of the materials.

Mr. Marcus explained that originally the plan was to use the materials from the buildings for the roadway. It is best not to use that material at all. Mr. Enos can explain about the demolition of the buildings. Mr. Paradis requested that all the areas be covered with top soil and seeded. Therefore, we will not be reusing the crushed materials on the site.

Mr. Berube stated so you will not be reusing that material. Mr. Berube asked Mr. Marcus if he would like to leave it open ended.

Mr. Marcus stated that Mr. Enos can speak about that.

Mr. Enos explained that the materials could be crushed as long as they are not coated. The State Regulations govern that if the material is coated a different process needs to be used. If the material is

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uncoated it is called ABC material and is commonly used as road based material. Anything that is painted will have to be removed from the site under the Department of Environment Protection (DEP) regulations.

Mr. Berube explained that the Board has given permission to use ABC material in the past. I just want to be clear, that you will not be using the demolition material on site or that you will not be importing ABC material for the roadway.

Mr. Marcus explained that because there are some unknown materials it will be safer and cleaner to use clean gravel so that we do not have issues.

Mr. Berube stated that he will hold Mr. Marcus to using clean gravel on the site.

Mrs. Giroux asked Mr. Berube if he had any other issues.

Mr. Berube stated that when it comes to demolishing the buildings a meeting will be scheduled to discuss the plans for the demolition so that we will have a better understanding of what is going to take place.

Mr. Marcus explained that Mr. Enos will be in charge of the demolition project.

Mr. Berube stated if there is asbestos in the buildings, a permit will be needed from the State as well as from the Board of Health.

Mr. Marcus explained that there will be more flood storage when the buildings are gone.

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

Mr. Reader asked how much of the material from the buildings could be salvageable.

Mr. Enos replied that the paved surfaces could be used for structural material. If the slabs are uncoated they could be reused. Brick cannot be recycled on site. Concrete walls that are painted cannot be used on site.

Mr. Reader commented that it will be better to remove all the material and debris from the site.

Mrs. O'Rourke asked how many buildings are involved.

Mr. Marcus replied three (3) buildings. An office building closest to Iron Horse Park, a research building and in back an industrial building.

Mr. Kane asked is there any ground contamination that we know of.

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Mr. Marcus explained that 10 years ago dozens of underground storage tanks were removed and testing was done. They found ground water wells and buried waste. They worked with DEP under the MCP and cleaned the site. Another Phase I Site Assessment will be done.

Mr. Kane asked how the Board would monitor the results. If the variance is granted and they start to work on the site and find contamination, how will that impact the variance that we are discussing tonight and what the next step would be?

Mr. Berube replied that there would be a change and they will have to come back before the Board.

Mr. Marcus explained if a problem is found it has to be reported to DEP. There are dozens of wells on the site that have been monitored for years and are clean.

Mr. Paradis explained that BETA's LSP reviewed the report and found that the site was clean.

Mr. Kane asked do you know of any potential asbestos contamination in the buildings.

Mr. Marcus replied that we don't have any information but we think there is asbestos material in the buildings.

Mr. Enos explained that before the buildings can be demolished an asbestos abatement company will come in and tell us what has to be done under strict regulations for containment of the material.

Mr. Kane asked what kind of action it would take to allow the use of ABC material on the site.

Mr. Berube replied the Board will have to grant approval for the use of ABC material.

Mr. Kane stated that he wanted to make sure that the applicant understands that if he wants to change plans and reuse the ABC material, he will be required to come back before the Board for approval.

Mr. Marcus explained that whatever is on that site will be removed from the site or stay on that parcel and will not get spread around. There will be no transfer of material around the site. Whatever is demolished will either stay on that parcel or be removed.

Mr. Berube replied that is allowed under DEP regulations. Mr. Berube clarified that the applicant will not reuse the material. They are either going to remove it or bury it in place. It will not be reused.

Mr. Marcus explained that it is a safer, cleaner practice to remove the material from the site.

Mrs. Giroux asked if any abutters were present.

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Bob Stanton, 7 Whitegate Road, identified himself. Mr. Stanton asked how the buildings will be removed.

Mrs. Giroux replied the buildings will be demolished on site.

Mr. Enos explained that the building debris will be trucked away unless there is uncoated concrete that can be used as fill. Any coated or painted surfaces or asbestos will be removed and disposed of under DEP's guidance.

Mr. Stanton asked will anyone from DEP or EPA be on site to supervise.

Mr. Enos explained that notifications are required to obtain the proper permits. They have the right to visit the site at any time. Usually with asbestos work the State visits the site. As for the disposal of the materials, there is a reporting process that needs to be filed.

Mr. Stanton asked when will this work take place. Will it be during the week or on weekends?

Mrs. Giroux replied that has not been discussed.

Mrs. Giroux asked Mr. Berube for his comments.

Mr. Berube stated that all the Board of Health's concerns have been addressed. The recommendations that Mr. Paradis has made in the comprehensive report will be included in the Conditions of Approval.

Mr. Grady made a motion to grant a Variance of the Board of Health Rules and Regulations, Chapter 5, Sections 5.5.005 (1) and (2) in order to construct a solar facility at Iron Horse Park in and within one hundred (100) feet of Flood Plain and Stormwater Management approval pursuant to the Board of Health Rules and Regulations, Chapter 6 based on the following findings of fact and pursuant to the following conditions and Special Conditions:

**FINDINGS OF FACT**

- 1) The work described in the applicant's request is within an area subject to protection under the Billerica Health's Rules and Regulations, Chapter 5, Sections 5.5.005 (1) (2) and Chapter 6 inclusive.
- 2) The Board of Health conducted a public hearing on October 6, 2014 and properly notified abutters in accordance with Billerica Health Regulations, Chapter 1, Section 1.2.007. The hearing closed on December 8, 2014.
- 3) The applicant proposes to construct a solar facility on approximately 14.8 acres of land of a 29 acre industrial site. The redevelopment of the former brownfield property includes the

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- 4) demolition of three (3) existing abandoned industrial buildings, restoration of the site and the installation of a 4.4 Megawatt solar array on a racking system set in concrete foundations.
- 4) The project was reviewed by Phil Paradis, Jr. of BETA Group, Inc., the Board of Health's Consulting Engineer, for potential impacts to the Flood Plain as well as compliance with applicable drainage regulations.
- 5) The Board of Health will impose reasonable conditions to ensure the project is constructed in accordance with approved plans.
- 6) The Board of Health has determined that the actions proposed by the applicant are adequate measures to protect the public health and environment and complies with the intent of Board of Health Rules and Regulations. Further, approval of the applicant's request will not be detrimental to the public health and environment.

**CONDITIONS**

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

- 1) All construction must be in accordance with plans and information submitted for review and approval, prepared by the following:
  - a) Civil Design Group. LLC dated May 7, 2014 and revised to November 26, 2014 and stamped by Matthew A. Leidner, RPE#45641, Glen Odonne Jr., RLS#45068 and Andrew J. Bohne, RLA#1608.
  - b) New England Environmental, Inc., last revised to December 5, 2014

**SPECIAL CONDITIONS**

- 25) A demolition plan must be submitted to and approved by the Board of Health and the Board's Consulting Engineer/Consultant prior to the approval of a demolition permit. The plan must include at a minimum the following items:
  - a) A written assessment of the asbestos and other hazardous materials contained in the existing structures. The removal of asbestos shall require a permit from MassDEP and the Board of Health. The disposal of any hazardous material shall be documented and submitted to the Board of health.
  - b) A site plan showing the location of all subsurface utilities and their dispositions and the areas designated for the stock piling of demolition debris.
  - c) Dust control procedures
  - d) Demolition sequence
- 26) The applicant and his construction supervisor/contractor and project engineer shall request and attend a pre-demolition meeting with the Director of Public Health, the Board of Health's Consulting Engineer and any other interested parties prior to beginning any demolition in order

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to review the demolition sequence for the project, establish an inspection schedule and address any other concerns. The meeting request shall be submitted to the Board of Health at least seven (7) days prior to beginning demolition.

- 27) Documentation of the disposition of all demolition debris shall be submitted to the Board of Health.
- 28) The applicant shall submit to the Board of Health and the Board's Consulting Engineer/Consultant for review and approval, an as-built plan of the cleared area for Solar Array C including spot grades to document that finished grades are less than or equal to existing grades within the Green Engineering Flood Plain prior to the approval of a building permit for the installation of the solar arrays.
- 29) The Stormwater Pollution Prevention Plan (SWPPP) and the US Environmental Protection Agency's Notice of Intent shall be submitted prior to or at the preconstruction meeting.
- 30) The applicant shall submit to the Board of Health and the Board's Consulting Engineer/Consultant for review and approval, a soil management plan relative to the clearing/disturbance of the site and the disposition of potentially contaminated soils and demolition material.
- 31) The applicant shall implement a Beaver Management Plan for the life span of the project. The plan shall be submitted to the Board of Health for review and approval and must include provisions for the installation of a flow device at Restoration Area 5 after the culverts are replaced.
- 32) The applicant shall submit to the Board of Health and the Board's Consulting Engineer/Consultant, a complete comprehensive design package (plans and all supporting documents) indicating all intended work shall be in conformance with all approvals by Town Agencies at least fourteen (14) days prior to the preconstruction meeting.

Mrs. O'Rourke seconded. So voted unanimously.

**8:00 p.m. Ryan and Taylor Ruiz – 43 Pines Road – Appeal Hearing for Notice of Violation and Order for Correction**

Mrs. Giroux stated the last hearing is Ryan and Taylor Ruiz, 43 Pines Road, Appeal Hearing for Notice of Violation and Order for Correction.

Ryan Ruiz, 43 Pines Road identified himself. Mr. Ruiz introduced his wife Taylor. Mr. Ruiz explained that since he requested the appeal hearing a lot has changed. The horses are no longer at 43 Pines Road. The horses are living on a farm in Methuen and we do not plan on bringing them back. We do not feel comfortable with the situation. We are requesting something in writing from the Board of Health regarding the dismissal of the Notice of Violation and Order for Correction.

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Ms. Taylor explained she was a professional equestrian and has been working as a manager in a horse barn for six (6) years. I have never heard of a lot of the Billerica regulations. The place where I work has a forty (40) horse stalls in a barn and we store the manure in the barn for two (2) months and then it is hauled away. There is no way possible to haul the manure away every day. I do not want these violations going against me for my career.

Mr. Ruiz stated that he disagrees with the regulations.

Mrs. O'Rourke asked where are the horses now.

Mr. Ruiz explained that the horses are on a farm off Route 93 in Methuen.

Mrs. Ruiz explained that the farm has about twenty (20) horses. It is a facility.

Mr. Reader asked has all the manure been removed from the property.

Mr. Ruiz replied yes, the property was cleaned before we received the Notice of Violation issued on October 24, 2014. We had planned on cleaning up the property before we received the violation. The one thing I would like to go over is the statement that Ms. Pheng made in the Notice of Violation regarding a phone conversation that she had with me on October 10, 2014 stating that the horse manure would be disposed of by the weekend of October 11, 2014. I think Ms. Pheng was mistaken. I would never have told her that because we were going on a camping trip that weekend with the horses. I did not say that we would do it that weekend. My exact words to her were that it would be done within a week or two. We had the manure cleaned up two weeks later (October 25, 2014).

Mr. Reader asked is the horse manure all cleaned up now.

Mr. Ruiz replied yes.

Mr. Reader stated that the picture taken on December 5, 2014 shows that the manure has not been removed.

Mrs. Giroux asked Ms. Pheng to explain the reason why she issued the Notice of Violation.

Ms. Pheng stated that she received a complaint regarding the odor from the horse manure at 43 Pines Road. When I tried to conduct an investigation, I could not see anything from the road because the barn and paddock area are in the rear of the property. I needed to obtain permission from 41 Pines Road to see into the back yard. The home owner at 41 Pines Road granted me permission to go on their property to investigate the manure odor. I saw a wheel barrel and piles of manure dumped behind the fence. I also detected an odor coming from the manure. I called Mrs. Ruiz because she owns the horses however she never returned my call. Then I called Mr. Ruiz and told him that there was a problem with the manure and it needed to be removed. Back in 2012 I also told him that the manure had to be removed at least once a month and he needed to turn in the receipts to the Board of Health office. This



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is a consistent problem because I have received complaints in 2012 and 2013 regarding the odor coming from the horse manure. I told Mr. Ruiz that he had to maintain the horses and the manure. Again in 2014 we received the same complaint regarding the odor coming from the manure. I contacted Mr. Ruiz again and told him that he needed to remove the manure. Mr. Ruiz told me he would do it that weekend. I visited the site with Christine Gualtieri, the Animal Control Officer (ACO) after October 11, 2014 and observed that the manure was still there and the paddock area was very muddy. Ms. Pheng provided the Board Members with pictures of 43 Pines Road from the complaint investigation.

Mrs. Giroux asked Christine Gualtieri (ACO) if she would like to comment.

Mrs. Gualtieri explained that last year when Maureen Ray (part-time ACO) and I conducted the barn inspection we noticed that the area was very muddy. The mud was up to the shins of the horses. There was only one area for the horses. There is a wire fence dividing the paddock so that there was no other place for the horses to go when the area is muddy. Last year we suggested that they get some wood chips to make the ground sturdy so that the horses would not slide. It was supposed to be done in a timely manner. We did another inspection in the fall of 2013 and they still did not have the wood chips in place. They kept on prolonging getting the wood chips and then we had a lot of snow and nothing was resolved. In the spring of 2014 they finally got the wood chips. We were very lenient in giving them enough time to provide what the horses needed. When I called to schedule the barn inspection in October 2014 they told me that they were having the manure removed and the wood chips delivered that day. Mr. Ruiz stated that he did not feel comfortable with me doing an inspection. They told me that they wanted me to wait until the manure was removed and the wood chips were in place. I gave them a week's time for them to call for an inspection. They called back to schedule an appointment for the inspection however the manure had not been removed.

Mrs. Giroux asked Ms. Ray if she had any comments.

Ms. Ray explained that last year was the first time I conducted an inspection of that property. The back yard is very small. When the permit was issued it was taken into consideration that they would be using the neighbor's yard at 45 Pines Road.

Ms. Gualtieri explained that without the neighbor's yard there would not have been enough room to apply for a permit. I don't think they are using the neighbor's yard.

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

Mrs. O'Rourke stated that she did not see a picture of the barn. Where is the barn?

Mr. Ruiz replied it is a three sided open faced barn with two stalls.

Mrs. O'Rourke commented that she did not know how you got a permit without a barn.

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Mr. Ruiz explained that the square footage required for a permit is based upon the size of the land. The land between 43 and 45 Pines Road is twenty thousand (20,000) square feet.

Mrs. O'Rourke asked how long have you had the permit.

Mr. Ruiz replied since 2011. There is no reference on how much land is needed for the horses.

Mrs. Ruiz explained that on a weekly basis we put the horses in the neighbor's fenced in yard to run.

Mr. Berube asked if the neighbor was present.

Mrs. Ruiz stated that she was not able to come tonight however she would write a letter of support stating that we could use the property at 45 Pines Road for the horses.

Mrs. O'Rourke stated if the horses have been removed and the manure is cleaned up what is the Board requesting.

Mr. Reader asked is the picture that was taken on December 5, 2014 correct.

Mr. Ruiz replied yes.

Mr. Berube asked what your intent is going forward. Are you going to remove the structure?

Mr. Ruiz explained that the structure is going to remain for now. In the spring, we are going to get wood chips to clean up the area. In the summer of 2013 the horses were gone and the grass started to grow back.

Mrs. Ruiz stated that in the spring we are going to plant grass and remove the fence.

Mr. Kane reviewed the Board of Health Rules and Regulations with Mr. and Mrs. Ruiz.

A discussion was held on the difference and uses of a stable and a barn.

Mr. Ruiz explained that he googled the definition of a stable and a shelter.

Mr. Kane commented that in the future instead of googling a definition you should go to the regulatory body that issues the permit and find out what the rules and regulations are.

Mrs. Ruiz asked does that mean that all the horses that reside in Billerica that only have a shelter should not have a permit.

Mrs. Gualtieri replied that I am not aware of any horse owners in Billerica that have a shelter.

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Mr. Kane explained if you know of any other horses that only have a shelter, please notify the Board of Health or the Animal Control Officers. This Board does its best to be consistent. If we do not know about an issue we cannot fix it.

Mr. Ruiz explained that we have gone all these years without any issues and we were not aware of this.

Mrs. Gualtieri replied that it is not your fault.

Mrs. Ruiz explained that from 2011 to the end of 2013 there were no issues. Then all of a sudden we were told about these issues.

Mr. Kane explained that a complaint was filed in the Board of Health office and the Health Agent and the ACO investigated the situation. They felt that it was valid enough to take action. At this point as long as you have cleaned up the property and resolved any outstanding issues then at this time there will be no other enforcement action.

Mr. Berube replied they still have to remove any remaining manure.

Mrs. Ray stated for the record the condition of the horses was never an issue. The horses were always taken care of and in great shape. The Horse and Barn permit should never have been issued.

Mrs. Giroux asked have you turned the permit in to the Board of Health office.

Mr. Berube explained that the permit would expire on December 31, 2014 and will not be renewed.

Mr. Kane asked will the building permit still be valid.

Mr. Berube explained that the permits go hand in hand.

Kathleen Mercer, 3 Daniel Finn Circle identified herself. Ms. Mercer explained I have been very quiet for two and a half years. The manure has been dumped on my property. At first, the manure was being dumped directly behind the stalls, but then it got out of hand and shovels full of manure were being spread on my property. I was very angry. They told me that trucks were being brought in every month through the Coffey's property to remove the manure which I found hard to believe because the Coffey's had just planted new grass. They asked me to give them six (6) months. The horses were going to be moved in March 2014. I told them that I would not file a complaint without telling them first and I have not filed a complaint. The things they are saying are not true. The stall is on my property and faces more towards my property than anyone else. The mud is so high. I have never seen the horses go into the fenced in area at 45 Pines Road. The horses cannot run around because of the mud. I want reassurance that someone will check and make sure that the horses do not come back and the manure is removed. I also want the stall that is on my property removed.

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Cynthia Michealson, 43 Pines Road identified herself. Ms. Michealson, explained that the stalls are on my property. If Ms. Mercer wants to get a surveyor she may.

Ms. Mercer explained I was hoping to avoid that. It is very hard to watch the horses in those conditions.

Ms. Michealson replied that the structure is on my land.

Mr. Berube explained that the map included in the Board's package shows the parcel lines. The stall and manure are located on 3 Daniel Finn's property however there is a margin of error on these maps.

Peter Martin, 38 Pines Road identified himself. Mr. Martin explained that at one time the horses were at 43 Pines Road and then they left and then came back again. I have never seen the horses go over to 45 Pines Road. I want to make sure that the horses do not come back again.

Mrs. Giroux asked Mr. Berube for his recommendations.

Mr. Berube stated that renewing the permit is a moot question. The cleaning of the property remains an outstanding issue so the Board could sustain the order. Mr. Berube asked Mr. and Mrs. Ruiz when the remaining manure would be removed from the property.

Mrs. Ruiz replied that it would be up to Sean Coffey. We used his yard to access the manure. We told him that we would not remove the manure until the spring time. We are going to leave some of the remaining manure for Sean to use with grass seed.

Mrs. Giroux asked would it be possible to remove some of the manure and leave some of the manure for fertilizer.

Mr. Reader stated that the manure should be removed now.

Mrs. Giroux stated that the shelter should also be removed.

Mr. Berube suggested that the Board modify the order for the removal of the stable and give them adequate time to remove the manure due to weather conditions.

Mr. Reader agreed with the time frame to remove the stable but the manure should be removed immediately.

Mrs. O'Rourke made a motion to clean up the manure as best as you can at this time and remove the remaining manure and stable by April 1, 2015.

Mrs. Ruiz asked why does the structure have to be removed.

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Mrs. O'Rourke asked what would you use the structure for.

Ms. Michealson replied that she would like to use the structure as a shed for storage.

Mr. Reader asked is the structure on the property at 3 Daniel Finn Circle.

Ms. Michealson stated that according to my plot plan the structure is not on the property at 3 Daniel Finn Circle.

Mrs. Giroux stated that the manure is to be removed now. Health Agent, Phavy Pheng will monitor the progress of the removal. The structure will be removed in the springtime.

Mrs. O'Rourke made a motion that Mr. and Mrs. Ruiz clean up the manure as soon as possible weather permitting and that Health Agent, Phavy Pheng will monitor the progress. In the spring the structure will be removed.

Mr. Ruiz asked if they could clean up the manure when they come back from vacation because they would not have time to clean it up until they come back.

Mrs. O'Rourke reiterated that the manure needs to be cleaned up as soon as possible.

Mr. Reader seconded. So voted unanimously.

**Open Microphone**

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

No one was present for open microphone.

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

The Board adjourned at 9:00 p.m.

Respectfully submitted,

Marie O'Rourke  
Secretary

Joanne M. White  
Recording Clerk