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Health Agent

## TOWN OF BOURNE BOARD OF HEALTH

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MINUTES  
July 9, 2014

**Members in attendance:** Kathy Peterson, Chairman; Stanley Andrews, Vice-Chairman; Donald Uitti, Secretary; Galon Barlow; and Kelly Mastria

**Support Staff in attendance:** Lisa Collett, Secretary and Cynthia Coffin, Health Agent

Meeting was called to order at 7:09 P.M by acting Chairman Stanley Andrews.

The items on the agenda were taken out of order. Item 1 is 4 King Arthur way.

1. **4 King Arthur Way – Ian and Belinda Rubinstein- Continued Appeal of the Board of Health order dated May 28, 2014 to remove roosters and request for variances of BOH Poultry Regulation** – Mr. Andrews stated that at the last hearing the board requested that the Rubinstein's come back with some information. The Rubinstein's submitted a letter dated July 9, 2014. The letter discusses working with the Cape Cod Farm Bureau for possible reduction of noise from the rooster. Mr. James Knieriem, from the Cape Cod and Islands Farm Bureau, stated he has had numbers of discussions with the Rubinsteins. They have worked on a mitigation plan based on work in other communities with similar noise issues with farm animals. Mr. Kneiriem stated that the Rubinsteins have just one rooster. In regards to the pen, the Rubinsteins are very neat and meticulous. The back of the pen is open to conservation land so noise carries in all different directions. There is a suggestion to plant something in front of the pen to block the noise, or perhaps add Plexiglas panels on the front of the run. Mr. Kneiriem stated that noise problem is not during the night because Ms. Rubinstein does lock the rooster in and the building is pretty soundproof. Mr. Kneiriem stated that no matter what the Rubinsteins come up with for the noise, they will never be able to make everyone happy. He did state that these are 4H chickens and Mrs. Rubinstein is an educator, so he is hoping the board will give some leniency to the one rooster. Mr. Barlow stated that he likes the idea of the Rubinsteins asking the Conservation Commission what type of vegetation should be planted to help break the noise down. Mr. Andrews stated that at the last meeting the board asked that that applicant come back with a mitigation plan. Mr.

Andrews sees a mitigation plan has been presented. This is the 3<sup>rd</sup> meeting on this issue and the board has done their due diligence. **Ms. Mastria made a motion to grant the variance to Ian and Belinda Rubinstein to keep their one rooster with this mitigation plan in place. Mr. Barlow seconded the motion adding one month for the Rubinstein's to institute this plan. Ms Coffin asked if there are any other variances. Mr. Rubinstein stated that the setback from the home and the property lines. Ms. Mastria amended her motion and made a new motion to grant Ian and Belinda Rubinstein of 4 King Arthur Way to keep the rooster and the other two variances to the property lines. Mr. Barlow seconded the motion. It was unanimous.**

2. **Harvest Power – Attorney Steven Torres – Discussion regarding lease to Harvard Power** – Attorney Steven Torres present for this meeting. Ms. Peterson stated that although Mr. McPhee is in the audience to discuss other options, the board cannot comment or discuss any of these issues yet so she is asking that Mr. McPhee save his comments until the board is presented with a project. Mr. Torres stated that he was unable to attend the joint meeting that was scheduled with the Board of Selectmen. Mr. Torres stated that even if he was able to attend that meeting, he would not have been able to comment on anything. It was the Board of Selectmen's presentation. Mr. Torres stated that on several occasions he has attempted to meet with the other attorneys to facilitate a process to recommend to the Board of Health that complies with the site assignment statute and regulations, and complies with the existing site assignment, in particular condition 10. Since the meetings, they have been able to agree on a process that he believes will satisfy the existing site assignment and not put the board in a situation to be challenged. Mr. Torres stated that the Board of Selectmen has agreed, with consent from their lawyers, to abide by his process. Mr. Torres stated that even though the process so far has not been what the Board of Health members expected time wise, he is confident the board is in a good position right now and will be given the time needed for approvals. The Board of Health has approval of who gets control of this site and what is done at this site. Mr. Torres stated that he has a memo that he would like to review first then submit to the board members for review. He is protecting his attorney/client privilege because once the board reviews any document; it will become public record as an opinion of counsel. By the next meeting, as long as the board concurs, the document will then become public record. Mr. Torres stated that it is his responsibility to hand the document to the board members as a confidential document because it is providing initial legal advice on condition 10. Mr. Torres stated that the Board of Health members treat the open meeting law with tremendous respect and that he has no objection as to when to make the document public record. Mr. Torres stated that the way condition 10 is formulated for approval is in 2 parts. If there is a transfer of control of the property, approval from the Board of Health is necessary. Some lawyers may question why this condition is still valid, but the condition was never appealed, so it is law in this case. No one so far is interested in making this condition go away. This is a good thing for the board. The only authority that can state that condition 10 does not apply is a court of law. The Policy of

condition 10 is to make sure that whatever is going on out at this property must have approval by the Board of Health. Mr. Torres stated that he has advocated and made certain that this condition 10 means something then, now, and in the future. If condition 10 gets violated then the lease assignment can no longer continue. Mr. Torres stated that he is confident that the town understands that nothing moves forward until the Board of Health signs off. Mr. Torres stated that he has arranged it so that condition 10 approval comes before the site assignment. A bank would not even consider lending money to the project until all the endorsements have been signed by the members of the board. Mr. Torres stated that it would take years for condition 10 to be overturned. He stated that he refers to condition 10 as the 'whom' and the site assignment is the 'what'. What he recommended to the town is a two step process, first condition 10, then the site assignment. Everyone is on board with this process. The board does not have to open a site assignment to address condition 10 but there needs to be a public hearing. Mr. Torres recommends on step one, which is condition 10, to determine if Harvest Power is an appropriate party for ISWM to transfer a portion of the site assignment premises to. Condition 10 states the board is approving a transfer of property. Mr. Torres stated that the Board is not going to let someone else other than Harvest Power be able to obtain the site assignment. Mr. Torres stated that step one will be to hold a public hearing on the appropriateness of Harvest Power to be the transferee of the acreage of property at the site assigned landfill. Mr. Torres stated that he will go through the process with the board and answer any questions or concerns the board might have regarding the integrity of Harvest Power. Mr. Torres stated that board should do a full review of Harvest Power's corporate compliance with respect to environmental standards, the structure of the corporation, and the financial standing to assume liability should anything happen on the site, even before they build, but not getting into the construction bond or the environmental issues, but certain criteria that they will have to qualify for to take control of that property. Mr. Torres stated that when the project gets to the site assignment phase, the board will want to make sure Harvest Power has a compliance plan and a proactive approach to emissions. The next step will be the site assignment phase. This process will give the board time to really review the site assignment before the site assignment moves forward. Mr. Barlow stated that the site assignment prohibits certain activities that Harvest Power may want to do on the site. The review of Harvest Power's ability to lease this property is based on the Board of Health addressing the site assignment. Mr. Barlow stated that the board can say they are not interested. Mr. Torres stated that the board can't address the site assignment issues until they receive the site assignment. The board is only agreeing to allow the transfer of the property not the operational provisions of the lease. Mr. Torres stated that the board can word the lease to approve the transfer of the property subject to the site assignment process, not anything the lease does. Mr. Barlow stated that the problem is not whether there is a lease or not, it is whether the board is willing to commit to changing and opening the site assignment to make changes to address this lease. Ms. Peterson stated that this cannot be determined ahead of time. The board would be approving the lease under the current site assignment knowing that Harvest Power

will be applying to modify the site assignment. The board is not approving or disapproving anything that Harvest Power might come in front of the board with because the board cannot rule on that right now. Ms. Peterson stated that the only issue being discussed tonight is condition 10 and the process to approve the lease for the Selectmen to sign. The Board of Health knows that the Selectmen want to sign a lease with Harvest Power. Mr. Torres is trying to tell the Board of Health members what he has agreed to with the other attorneys and let the board think about it for couple of weeks and then put it back on the agenda for approval. Mr. Barlow stated that was fine if that is what Ms. Peterson believes but he does not know if the Selectmen want to be involved as far as this. Mr. Torres stated that from a technical standpoint, Mr. Barlow does not want the Selectmen to be able to use this lease approval to automatically go with their plan and from a policy standpoint, they certainly don't want this vote of approval of the transfer of the property to be a fact of endorsement of what Harvest Power is proposing to build. Mr. Torres stated that the Selectmen are basically agreeing that the Board of Health has the final say on whether or not it is built. Mr. Torres stated that this will be included in the resolution. Mr. Torres stated that he will have the draft resolution ready for the next meeting. Mr. Torres stated that the board has plenty of time to review the lease and understand every aspect of and analyze any impact of the provision. The board does not have to wait to get the site assignment but the board can certainly ask questions. The board just cannot question any of the conditions right now. Ms. Peterson asked if Harvest Power has requested to come to a Board of Health meeting. Mr. Torres stated that he is not sure if they have seen what was put together for a process, but that Harvest Power is looking to have a lease approved by the Selectmen as a transfer of the site in control of them, which is adequate for their purposes right now, and then to enter into the site assignment process. Mr. Torres stated that the way the board gets additional time is to not conduct a site assignment process but by the lease being submitted and submitting the information that supported their proposal without getting the site assignment criteria, the board is given time to review the lease. By Harvest Power not submitting an application yet or by them submitting details of other facilities, the Board of Health is given more time to actually review the site assignment. Mr. Andrews stated that he has felt threatened on how to speak or not to speak on things. Mr. Andrews stated that he did not make any comments at the joint meeting because of the way it was presented to the Board of Health. Mr. Torres stated that he did observe that when he reviewed the tape of the meeting. Mr. Torres stated that he was concerned that the Board of Health would feel boxed in on what they can ask. Mr. Torres stated that with this process he will outline exactly what can be asked on condition 10 and what can be asked in the site assignment and what information can be shared in between to get the Board of Health ready for the site assignment. As public officials, the board represents the town so there will be questions that need to be asked. Mr. Andrews stated that was true. The people of the town do have some questions. Mr. Andrews stated that he felt threatened that the board will not be allowed to sit for the site assignment if any questions are asked, which is what was stated at the joint meeting. Mr. Torres stated that the statement was made just in case the board

started the site assignment process before the site assignment was open. Mr. Barlow stated that the Board of Health felt intimidated. The board received a copy of the tape and they have no problem signing something from the bar association asking for some disciplinary action because the attorney was very aggressive and feels that he was very rude. Mr. Barlow stated that this was a joint meeting with the Board of Health and the Selectmen's office and both boards have the authority to approve the minutes but the Board of Health has not received a copy of those minutes. Mr. Torres stated that he requested a copy of those minutes and did receive them. Mr. Torres stated that the Board of Health members will be able to ask questions at the appropriate time; then the board can make their recommendation and conditions. Mr. Torres stated that if the board concludes that this project is not in the best interest for the health and safety of the environment, then it is ok to reject. Ms. Peterson requested that Mr. Torres put together questions that the board may ask under condition 10. At the next meeting the board will further discuss the questions and by then Mr. Torres should know if and when Harvest Power is going to present something to the Board of Health. Ms. Peterson stated that the board has been asking to do these things prior to this meeting. Ms. Peterson stated that probably Mr. Torres will be on the agenda for the next 5 to 6 meetings. Mr. Torres stated yes, whatever it takes to help the board through this process. Ms. Peterson stated that until the board has a meeting prior to site assignment, that it will need to be done in executive session. Ms. Peterson stated that she remembers from the last site assignment there were 2 or 3 executive session meetings prior to site assignment so the board could discuss freely with the attorney about various things. Mr. Torres stated that was correct. Mr. Torres stated that once the executive session is completed, the minutes become public and public hearings continue again. Mr. Torres stated that this is a new process and it will take time for the board to get through it. Mr. Barlow stated that there may be a different perception for a specific requirement which may be perceived differently. Mr. Barlow stated that he is not comfortable with changing the perception of things regarding the site assignment. Ms. Peterson stated that prior to the site assignment when the board meets with Mr. Torres, with the types of conditions the board will be looking for; the board will know the public is protected because the public will find out what the board discussed once it becomes public. Mr. Barlow stated that Mr. Torres will tell the board members what questions they can ask but the board may be more comfortable asking other questions as well. Mr. Torres stated that he will not be telling the board members what questions they can ask. He will be guiding them on what areas the questions can be asked about in site assignment and condition 10 while trying to keep them separate to remain impartial and preserving condition 10. Mr. Torres stated that he wants this process to be watertight with anyone threatening appeals because of questions that should not have been asked before the opening of the site assignment. Mr. Barlow stated that he finds this very difficult because it is going forward as if this particular proposal meets the current requirements. Ms. Peterson stated that was not correct. Ms. Peterson stated that they need to apply for modification of the site assignment but before that, Harvest Power needs to get approval from the Board of Health to sign

the lease to allow someone to come to the Board of Health and ask to be able to modify the site assignment. Ms. Mastria asked if the Selectmen are the applicants that will allow Harvest Power to apply to the Board of Health. By signing the lease, the Selectmen are the ones that are giving Harvest Power the ok to apply to the Board of Health. Mr. Torres stated that was correct and that transfer becomes effective only when the Board of Health approves the transfer of the property. That transfer will only allow Harvest Power to apply. Ms. Mastria asked if it is safe to say that the perception of the town is step one is the Selectmen have to sign the lease in order for Harvest Power to apply to the Board of Health. Ms. Peterson stated that the Board of Health needs to give the Selectmen, under condition 10, a vote from the board saying that we approve the fact that they can sign the lease with Harvest Power because the Board of Health has reviewed the applicant. Mr. Barlow stated that looking through history of other projects that have come before the board over the years; the Selectmen have not always done things within the guidelines of the landfill or the site assignment. Ms. Peterson stated that is why condition 10 is in the site assignment. Mr. Torres stated that there are so many environmental projects like this are almost the same but they are not site assigned. What happens is a contingency clause in the purchase and sales. Mr. Torres stated that when the Board of Health approves this, the board is approving the transfer of the lease only. Ms. Peterson said to put Mr. Torres back on the agenda for the next meeting. Mr. Barlow asked if the meeting can be cancelled because it is during the centennial celebration. Ms. Peterson suggested moving the meeting out to July 30, 2014. **No action to be taken on this item at this time.**

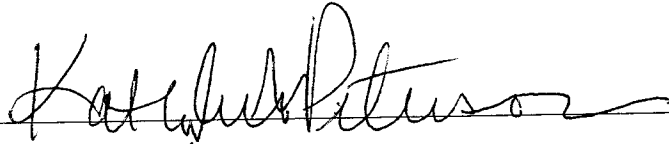
3. **Approve the minutes of the meeting dated May 14, 2014 – Mr. Uitti made a motion to approve the minutes of the meeting dated May 14, 2014. Ms. Mastria seconded the motion. All in favor. It was unanimous.**

**Mr. Andrews made a motion to adjourn. Mr. Uitti seconded the motion. It was a unanimous vote. The meeting adjourned at 8:16 P.M.**

Taped and typed by the Secretary  
Lisa Collett

Reviewed and approved by the Health Agent  
Cynthia A Coffin

Kathleen Peterson



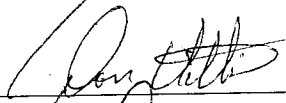
Stanley Andrews



Galon Barlow



Don Uitti



Kelly Mastria



cc Board of Selectmen/Town Clerk