



Terri Guarino
Health Agent

TOWN OF BOURNE BOARD OF HEALTH

2016 FEB 25 AM 11:24
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MINUTES January 27, 2016

Members in attendance: Kathy Peterson, Chairman; Stanley Andrews, Vice Chairman; Galon Barlow and Kelly Mastria

Support Staff in attendance: Terri Guarino, Health Agent, Jamie Butler, Health Inspector and Lisa Collett, Secretary

MEETING WAS CALLED TO ORDER AT 7:10 PM

Michael Rausch from the Bourne Enterprise is present and recording.

- 1. 3 BRENDON LANE – Continued from January 13, 2016 – I/A Septic system non-compliance – Terri Guarino – Discussion and possible vote to issue fined for lack of operation and maintenance contract and violation of Board of Health Alternative Septic System Regulations.** – There is no one in attendance for this hearing. Ms. Guarino stated that since the last meeting, she still has not received a maintenance contract. Ms. Guarino stated that this is not the first offense by this homeowner. Ms. Peterson stated the homeowner has 2 options. Renew the maintenance contract as the law requires or pay a \$500.00 fine tonight and then another \$1,000.00 tomorrow for still not being in compliance. **Mr. Andrews made a motion to implement the \$500.00 fine for non-compliance and that this gets continued until our next meeting dated February 24, 2016.** Ms. Peterson stated that can't be done because the homeowner was already fined the \$500.00. This is actually the third offense. Ms. Peterson stated she is willing to keep it at the second offense. Ms. Peterson would like to fine him at least \$3,000.00. ****Mr. Barlow suggest to skip this item and approve the minutes of January 13, 2016 before further discussion. Ms. Peterson agreed. **** The minutes were approved unanimously. Mr. Barlow referred to the minutes from January 13, 2016 stating the board would fine the homeowner \$500.00 that evening then another \$1,000.00 the next day. Mr. Andrews asked what the regulation allows for fines. Ms. Guarino read the regulation verbatim to the board. The regulation does not have a third offense amount. No other system in the town has ever been fined before. Ms. Peterson stated that a statement must be made because the board allowed them to build the house as long as he abided by the regulation. Mr. Barlow suggested to have the water shut off at the house. Ms. Peterson stated that she would like to place another \$1,000.00 fine bring the total to \$2,500.00. She would also like the water department notified to find out if the board can

request to have the water shut off. Mr. Andrews stated he would also like to have the occupancy permit removed. Ms. Guarino stated that she believes the board can request that once the fines are issued and the homeowner refuses to pay them. That would be the next step. **Ms. Peterson made a motion to send the homeowner a letter stating the fines, the water department is being contacted to shut the water off and that the next step will be, which does not need to come back before the board, if a contract is not submitted within 7 days, removal of the occupancy permit. The property will be deemed unfit for human habitation because of the septic system being in non-compliance. Mr. Andrews seconded the motion. It was unanimous.**

2. **85-93 MAIN STREET – Continued from January 13, 2016 – Daniel MacDonald – Request waiver of fines that have been assessed against the property** – Ms. Peterson asked what the total is for the fines already incurred. Ms. Butler answered the fines started September 13, 2015 and ended January 13, 2016. \$300.00 per day for 122 days would equal \$36,600.00. Ms. MacDonald stated that she agrees with the start date but the end date should be December 9, 2015. The new figure due with the correct end date and amount is 87 days which equals \$26,100.00. Mr. Andrews stated after reviewing the documents since September 2015 there have been corrections made but not steadily until October 2015. Approximately 3 weeks which calculates to \$6,300.00. A lot of work has been done by the MacDonald's. Contracts were signed and carried through. Mr. Andrews stated that he would willing to reduce the fines from \$26,100.00 to \$5,000.00 and settle this out tonight if the MacDonald's are willing. Ms. Guarino stated that she is comfortable with the offer Mr. Andrews is making. Mr. MacDonald asked what other rights have been waived. Mr. Andrews answered that Mr. MacDonald admits he was in violation and will pay \$5,000.00 in fines to settle with the Board of Health this evening. Ms. MacDonald reviewed with the board again the dates, times and activity that has been submitted to the Board of Health since the violation occurred. Ms. MacDonald feels the fines should be waived completely as requested. Ms. Peterson stated that the Board is being more than fair with the \$5,000.00 offer. If the MacDonald's decide to decline this offer, the issue will be continued and referred to Town Counsel. Ms. MacDonald stated that a meeting in September 2015, 69 Main Street was also fined \$300.00 per day but eventually all their fined got waived. Ms. Peterson stated that was correct but in that case, the owner acted very quickly and had the building demolished. There are no other violations concerning that building. Mr. MacDonald asked if they agree to the settlement could the board allow for time to pay other than this evening. Ms. Peterson stated that this has been going on for a long time and the MacDonald's are clearly aware that they are being fined so they should have been prepared to pay this evening. She is not willing to give any extra time. Ms. MacDonald feels they have already paid significantly, not in the form of dollars but with insulting comments made by the board and negative comments written in the newspaper by the press. Mr. MacDonald asked when the payment needs to be paid. Ms. Peterson stated this evening. Mr. MacDonald stated that he does not have a check with him tonight. Mr. MacDonald stated that without offending the board, he feels that he has complied with what the board has requested but it willing to settle with the board by paying \$5,000.00 by check at the office tomorrow. **Mr. Andrews made a motion to reduce the fines on 85-93 Main Street to \$5,000.00 and that the MacDonald's will be making the payment at the office before close of**

business on Thursday, January 28, 2016. Ms. Mastria seconded the motion. It was unanimous.

3. **1077 COUNTY RD – Continued from January 13, 2016 – Rose Kozaryn – Request variance to add 3 additional horses to her existing variance. Total number of horses will be 8 horses – Mr. Barlow stepped back on for this item.** Mr. Victor Gross, Ms. Wendy Roth and Ms. Rose Kozaryn were present for this hearing. Ms. Roth stated that at the last meeting, it was discussed that a horse is a horse and there are really no differences. After lots of research, she can prove the vast differences between a horse, a pony and a miniature horse. Ms. Andrews stated that according to the Board of Health regulation, it does specify horses and ponies. Ms. Roth read from a document which clearly indicates the differences between these 3 animals. Mr. Barlow stated that if the applicants would like to amend their variance request to state 5 miniature horses and 3 ponies would be a big difference from 5 horses he does not have a problem with that. Mr. Andrews stated that the current license is for 5 horses. Mr. Barlow stated the applicant can amend from the 5 horses to fit the Board of Health regulations. Ms. Guarino stated that it needs to be clearly noted what types of equine will be allowed on this property. Ms. Mastria stated she has done a lot of reading regarding horses. One acre per horse and one acre per 3 miniature horses so the regulation does need to be changed and updated. Ms. Roth would like to amend their variance to state 4 ponies and 4 miniature horses. Ms. Guarino stated she would like the names and ages of what is existing on the property. Mr. Gross stated there are 2 ponies named Reeses and Blue. One miniature horse named Snickers. There are two other miniature horses that stay but are in training. Their names are Heath and Twix. Ms. Guarino stated that according to the current license, there is a horse named Flash age 4.5. Mr. Gross stated that Flash is now renamed to Twix. Ms. Guarino stated there is a horse named Peaches. Mr. Gross stated that Peaches is gone. She was a rescue horse. Ms. Guarino stated there is a horse named Lillie. Mr. Gross stated that she too is gone and was also a rescue horse. Ms. Guarino asked why the other animals are not listed on the current license. Ms. Kozaryn stated that the changes came after she relicensed for the year. Ms. Roth stated that there are 2 barns that the horses move back and forth. Ms. Peterson stated that concerns her because if this variance is granted, it will be granted for what is requested tonight which is 4 ponies and 4 miniature horses. Ms. Peterson stated that she did a site visit and the fence is right up against the property line. That will need to be moved if the variance is granted. Mr. Andrews stated that he would like a scaled plan submitted proving the distances from the buildings to the paddocks. He would also like to see an asbuilt to make sure the paddocks are not on top of any septic components. Mr. Kirk Dirubio was present for this hearing. Mr. Dirubio stated his property abuts the entire paddock. Mr. Dirubio stated that the side of the yard with the paddock there is a slope. Each time it rains, urine and feces runs off and into his yard. Ms. Guarino stated that the Health Department has never received a complaint on this issue. Mr. Dirubio stated that it was mentioned in a letter dated January 5, 2016. Ms. Guarino stated that some sort of drainage could be installed to prevent that from happening should the variance get granted. Ms. Mastria stated the applicant can come up with some type of mitigation for that. The Board is not responsible for any recommendations to that effect. Ms. Guarino stated that issue should be addressed immediately with or without the variance being granted. Mr. Dirubio stated that his second concern is that Candyland has not retained a
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license from the Board of Health. Ms. Guarino stated that the license will need to be updated to include the name of the business. Ms. Peterson stated that she has a copy of the corporation records that indicates the business named Candyland is at 1077 County Rd. Mr. Dirubio stated that his third issue is none of the abutters were notified when the variance request was from 3 to 5 horses. Ms. Guarino stated that the physical file has been looked at numerous times by a number of people and cannot be truthfully verified if the abutters were notified or not because information could have been removed from the file. Mr. Dirubio stated that his fourth issue is regarding the paddocks but that has already been addressed. Mr. Dirubio stated that his fifth issue is regarding variances to which a hardship is proven. There is no hardship here so there should not be any approved variances. Ms. Collett explains the definition of a hardship as it pertains to setbacks. The Board agreed with the definition. Mr. Dirubio stated that his sixth issue is the paddocks. He doesn't believe the paddocks are big enough to accommodate the number of horses they want to have. Mr. Gross stated that the driveway will be moved to meet the setback to the paddock. Mr. Dirubio stated that his seventh issue is the miniature horses. The regulation states that a horse is a horse so who will be the one determining if a horse is a miniature horse or a regular horse. Ms. Guarino stated that based on a complaint, the office will come and verify the size of the miniature horse to prove it is a miniature horse. Mr. Gross will get a gauge to be able to measure at the Board's request. Ms. Susan Dirubio is also present for this hearing. Ms. Dirubio stated she also has concerns with the site plan and appreciates the board has addressed it. Ms. Dirubio stated that she is very concerned about the meeting that the abutters were not notified. A couple of statements were made at that meeting which probably allowed the variance to be granted. One was the statement that there is 2.5 acres of land and there is not. There is only 2.17 acres. Ms. Dirubio stated she was unaware she could voice a complaint to the Board of Health. Mr. Steve Ballentine was present for this hearing. Mr. Ballentine stated that his concerns have been addressed to this point. Mr. Ballentine would like it stipulated in the variance that only 4 miniature horses and 4 ponies are allowed on the property at any given time. Mr. David Dimerek was present for this hearing. Mr. Dimick stated that by the sounds of this, he should be able to add 100 animals on his property but he knows that is untrue. The regulation states basically that you can have 2 large animals on your property. Otherwise you must request a variance from the Board of Health. Mr. Dimick stated that there is no grass what so ever and he is concerned for the animals because of no grass. A small area should not be allowed to be over crowded with livestock. Ms. Peterson stated that there are no regulations on how a person chooses to use their property in regards to maximizing space. Mr. Barlow stated that this discussion as he understands it will be to allow 4 miniature horses and 4 ponies which is a lot less than the 5 horses they are permitted for right now. Ms. Peterson stated that there were a lot of things discussed tonight and feels more information should be submitted before a decision is made. **Ms. Peterson made a motion to continue this discussion until the next meeting dated February 24, 2016. The applicant must supply a mitigation plan for the runoff. The fence line and the reconfiguration of the paddocks to meet the setback. The asbuilt for the septic system to make sure there is nothing built over the components of the system. An updated plot plan to scale. The Manure Management Plan submitted. Sanitary facilities for the indoor riding ring. A hand gage to be able to measure the miniature horses. Mr. Barlow seconded the motion. It was unanimous. For the record, a cell phone was used to**

look up information from the internet regarding size of horses, other regulations and pertinent information regarding this item and to photograph the list that was read into the motion. Ms. Peterson reminded the applicant to request a Withdrawal Without Prejudice form if they will not be able to make it to the meeting. Otherwise the board will automatically deny due to time constraints. The applicants are aware that should the board deny because of time constraints, the applicants start from the beginning to request a variance.

4. **10 FORETOP – Terri Guarino – Failure to repair/upgrade failed septic system from expired Title 5 report** – Ms. Guarino stated that there really isn't anything to discuss at this point. This is a foreclosed property with a failed Title 5 report from 2 years ago. The property has not been occupied since the Title 5 report. Ms. Peterson stated that she will get the information from the foreclosing attorney. The bank is the new owner and will be held accountable for the failed system as any other homeowner would be. Once the information is received the office can inform of the failed Title 5 explaining they are not in compliance and if they do not repair the system they will be before the board. **No action was taken at this time. Ms. Peterson would like this continued to the February 24th meeting.**
5. **JASPERS TOO MOTEL – Jamie Butler – Failure to comply with the State Sanitary Code and Town of Bourne Motel Regulations – Discussion and possible vote to refuse renewal of motel license and/or enforce fines** – Ms. Judith Tubbs was present for this hearing. Mr. Richard Flaherty and Ms. Louise Nelson were also present for this hearing. The Health Inspector, Jamie Butler stated she was out at this property in August of 2015 for a routine inspection. She noted several violations throughout the hotel. Most of the violations have been addressed by Ms. Tubbs. There was one room that she was unable to inspect due to an issue with an aggressive dog. As of November, that issue turned out to be not true but there was a problem in that room with excessive clutter. This has been an ongoing issue since August 2015. Ms. Butler stated that there should be conditions before a new Motel License is issued. Ms. Butler stated that she has attempted several times to inspect the rooms. Ms. Peterson counted at least 5 times that the Board of Health Inspector has had to go out to this property to inspect. Ms. Peterson asked if the conditions here fall within the Board of Health's new Blight Regulation. Ms. Guarino stated yes. Ms. Peterson would like to start charging for each time Ms. Butler needs to go out and do an inspection. Ms. Guarino stated that the conditions in this room are deemed unsafe for the inspector to do a proper inspection. Mr. Andrews asked if the inspector is looking to track the violations that have been stated on a list. Ms. Guarino stated that this is a reoccurring violation of the town's regulations and the minimum standards for human habitation. Ms. Mastria stated that it is the owner of the motel's responsibility to make sure the Board of Health has safe conditions when an inspection of a room is needed. Ms. Peterson stated that similar issues have been brought before the board very recently about another Motel in the town and feels this owner should have to face the same consequences as the owner from the last motel brought before the board. Ms. Tubbs stated that looking back over the years, there has never been any problems with her hotel. After Ms. Butler did the routine inspection, so problems were found and addressed. During the inspection in early December is when Ms. Butler discovered the excessive clutter enabling her to do a proper inspection. That very next day, Ms. Tubbs stated she
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served Mr. Flaherty and Ms. Nelson with an eviction notice. Ms. Tubbs stated that her court date for the eviction is February 11, 2016. Mr. Flaherty stated the he and Ms. Nelson are the occupants of room 10. Ms. Nelson stated that they have had some very extraordinary experiences that have brought them to the hotel in the first place. Ms. Nelson stated that she lived in Western Massachusetts but her home there burnt down during a storm. Ms. Nelson stated that she has a summer home here in Bourne. The summer home has been robbed and vandalized to the point of her not feeling safe to live there. That is when she decided to move into the hotel. Ms. Nelson has a storage unit and is trying to get things from the hotel room into the storage unit. Ms. Nelson disagrees with Ms. Butler stating she is unable to do a complete inspections. The windows and the egress is clear and there is plenty of room to move around. Each day she is trying to get things out of the room and into storage. Her goal is to get back into her summer home eventually. Ms. Nelson stated that she has never caused any trouble to Ms. Tubbs or anyone else living at the hotel. Ms. Peterson asked what the condition of the room was when she did the last inspection. Ms. Butler explains what she saw in the room. Ms. Butler took pictures and shared them with the members of the board. Mr. Andrews stated that the condition of the room is unacceptable. It is unsafe for Mr. Flaherty and Ms. Nelson and certainly not safe for emergency personnel if they ever needed to get in there to help someone. Ms. Tubbs asked the board if she can have until after her court hearing to make sure everyone is out. Mr. Flaherty stated that there are some items in the room that Ms. Nelson needs on a daily basis. Mr. Andrews stated he saw nothing in the pictures that someone would need every day so he would like the room completely cleaned out. Ms. Peterson stated that the Board of Health has requested a number of times to clean out the clutter. Right now the only option for Ms. Nelson and Mr. Flaherty is to clean out that room completely and remain a normal state of sanitization. Mr. Andrews stated that the board will put stipulations on the renewal license because of the state of this room. Ms. Peterson stated that this room is being ordered by the Board of Health to have the room cleaned and sanitized immediately. Ms. Guarino stated that this room is deemed unfit for human habitation and the board should make a motion to that effect. **Mr. Andrews made a motion that the tenant and all its contents be out of room 10 within 24 hours from this moment. It will be at the cost of the tenants not the motel owner. Mr. Barlow seconded the motion. It was unanimous. Mr. Andrews made a motion to approve the Jaspers Too Motel License with the 8 bullet items referenced in Ms. Butler's email sent this afternoon. Ms. Mastria seconded the motion. It was unanimous.**

6. **APPROVE THE MEETING MINUTES - from the meeting dated January 13, 2016 – Mr. Andrews made a motion to approve the minutes dated January 13, 2016. Mr. Barlow seconded the motion. It was unanimous. **Ms. Peterson stated the board will now hear item number 1****

Mr. Andrews made a motion to adjourn the meeting. Ms. Peterson seconded the motion. It was a unanimous vote and the meeting adjourned at 9:44 PM.

Taped and typed by Lisa Collett, Secretary

Kathleen Peterson _____

Stanley Andrews _____

Galon Barlow _____

Don Uitti _____

Kelly Mastria – _____

cc Board of Selectmen/Town Clerk