



Terri A. Guarino
Health Agent

**TOWN OF BOURNE
BOARD OF HEALTH**

24 Perry Avenue
Buzzards Bay, MA 02532
www.townofbourne.com/health
Phone (508) 759-0600 ext. 1513
Fax (508) 759-0679



MINUTES
February 14, 2018

Members in attendance: Kathleen Peterson, Chairperson; Stanley Andrews, Vice Chairperson; Galon Barlow Jr.; and Kelly Mastria via conference call

Support Staff in attendance: Terri Guarino, Health Agent; Kayla Davis, Health Inspector; and Meghan McLean, Administrative Assistant

Meeting was called to order at 7:00 pm

Ms. Peterson asked the audience if anyone would be recording this meeting. Michael Rausch, a reporter for the Bourne Enterprise, and Philip Austin, owner of the Pocasset Mobile Home Park, were recording audio. Gary Maloney, Bourne resident, recorded using a camcorder.

Ms. Peterson explained that Ms. Mastria would be participating remotely and asked for a roll call vote to allow the phone call. Roll call vote: Mr. Barlow, yes; Mr. Andrews, yes; Ms. Peterson, yes. All were in favor.
Mr. Andrews chaired the meeting.

- 1. 594 Circuit Avenue—Title 5 Inspection requiring further evaluation from the Board of Health where existing septic system (permit #177-96) does not meet requirements of Title 5 of the State Environmental Code and Bourne Board of Health 150 foot setback Regulations. Discussion and possible vote.** Zac Basinski, Professional Engineer at Bracken Engineering, was present on behalf of Anne Camille Maher for this meeting. He explained that this project has been before the Board in 2015. At that time, the homeowner was looking to tear down and rebuild the dwelling. Since then, the engineers have been before the Board for an extension of the original permit in May of 2017. After a lengthy review of the project, the homeowner felt that it is not feasible for her to complete the project and is now selling the home. The potential buyers of the property do not want to move forward without approval from the Board of Health that the existing system will support the dwelling. The homeowner had a Title V Inspection completed on January 20, 2018 which reported that the existing system failed. Mr. Basinski stated that the failed inspection was completed incorrectly by another inspector. He revisited the property and re-inspected the part of the system that had failed after speaking with the Board of Health and determined that it is actually a passing system. The groundwater requirements are being met and were confirmed based on information previously submitted to the Health Department. Ms. Peterson asked if this potential buyer was absolutely sure that this is what they want. Mr. Basinski stated that he spoke with them last night and they are looking to go after an offer and want to maintain the existing septic system and dwelling. He said that if the Board chooses to revoke the previously approved permits he understands that as well. Ms. Peterson stated that she is reluctant based on how difficult it was to establish the variance approvals for the proposed new dwelling in the first place. Ms. Guarino stated that she had spoken to the owner and they are looking to sell property as is, and the current system would constitute as passing if sold as such. The system was upgraded in 1996. At the time of the upgrade, a letter was issued explaining that the system does not meet all of the requirements of Title V and that any alterations or renovations to the dwelling or the septic system would require a hearing before the Board of Health. Mr. Andrews asked for clarification from Ms. Guarino that, provided that the house stays in as-is condition and the existing system passed the Title V Inspection, the Board can rescind the variances and permit that were issued in 2015. Ms. Guarino

stated that the stipulations of the approvals last heard before the Board on May 17, 2017 are null and void at this point anyhow. The motion in May stated that construction was supposed to start within 6 months of extending the validity of the variances. Mr. Barlow stated that he has read the letter the Health Agent prepared and concurs with its contents. Ms. Peterson also agreed, and stated that the Board should require the owner's lawyer to prepare a document acknowledging the situation. She would like to see Mr. Basinski at the next meeting with an attorney-produced letter stating all stipulations and requirements that Ms. Guarino has gone over this evening. Ms. Peterson stated that it is up to the owner and her attorney. Andrews asked if there were any comments or discussion from the audience, of which there were none. **Mr. Barlow made a motion to continue until the next Board of Health meeting and give Mr. Basinski the opportunity to get the attorney-produced letter submitted. Ms. Peterson seconded, and Mr. Andrews asked for a roll call vote: Mr. Barlow, yes; Ms. Mastria, yes; Ms. Peterson, yes; Mr. Andrews, yes. All were in favor, the vote was unanimous.**

2. **25 Bayview Avenue—CONTINUED from January 10, 2018— Lorraine Starr, Owner--Hearing to discuss order dated December 14, 2017 and outstanding violations of the State Sanitary Code. Discussion and possible vote.** Andrea McKnight, Attorney, and Lorraine Starr, property owner, were present for this meeting. Ms. McKnight stated there was an inspection conducted at the end of January and there has not been a hearing held since that time. She had spoken with Ms. Guarino to try and narrow down exactly what the issues were and she believes a lot of problems have been remedied. There have been documents submitted proving that a lot of work has been completed at the property. Out of all of the violations discussed at the last meeting, 2 outstanding issues remain which are the windows with cracked panes and the cesspool replacement. The window replacement is not practical to start at this time due to the winter season, and Ms. Guarino has spoken to her in regards to completing them in the spring. Ms. McKnight explained that the tenant is scheduled to vacate the premises at the end of July and the court ordered eviction has been completed. She stated that once the tenant leaves, Ms. Starr is prepared to replace the cesspool. A contractor has been hired to start the design and all preliminary work has been done. Ms. McKnight requested to wait until the summer to replace the cesspool. Ms. Guarino stated that pump-out records have been submitted to the Health office so it is being maintained and in the process of being designed. She stated that it is important to establish a specific time frame for the project to be completed and that it is in best interest of the owner to get it replaced as soon as possible, but it is noted that it is being maintained. The capacity of the primary cesspool is only 500 gallons, and the minimum tank size for a single family dwelling is 1500 gallons. Depending on the use, it might have to be pumped out more frequently than normal. The windows are historic windows, and she understands the documents that were provided and how the owner intends on replacing panes of glass. Ms. Guarino stated that she has not heard any disapproval from the occupant regarding this. Mr. Barlow asked if the house is over 75 years old, to which Ms. Guarino responded yes. Mr. Barlow stated that being the case, they may have to appear before the Historic Commission to determine how to resolve the windows. Ms. Guarino asked Ms. Starr if just the panes of glass are being replaced or if the entire window itself was being replaced. A specialist from Northampton told Ms. Starr that he has the tools and materials to replace just the panes instead of replacing the whole window. Ms. Guarino stated that the office has not been able to do re-inspection since January 24, 2018. The owner has provided weather stripping for the windows in need of repair as well as taping the holes and cracks. Ms. Peterson asked if all other violations have been corrected. Ms. Guarino reiterated that there has not been a re-inspection conducted, but the office has been in communication with the owner and the tenant does not have flexibility to allow entry. She explained that the tenant has a work schedule that conflicts with the office's business hours. There was a re-inspection scheduled for last Thursday and something came up which required a cancellation and the tenant has not rescheduled. Ms. McKnight stated that the tenant is a veterinary assistant and that she is unsure why it is so difficult for her to allow access to the property. She explained that she has tried to work directly with the tenant to arrange entry and has discovered communication to be difficult as well. Mr. Andrews stated that at our last meeting regarding this item, the Board informed the tenant that if she didn't allow access the fines could land on her. He suggested that the Board should revisit that issue and notify the tenant that it can happen. Ms. Guarino stated that according to owner, with photos provided, that it appears as though interior repairs have been completed and the only outstanding items are the two stated earlier. Mr. Andrews asked if Ms. Guarino is satisfied with the documents that have been received. Ms. Guarino stated that for now they are sufficient seeing as though the re-inspection has not

been coordinated with the occupant. Ms. Peterson asked what the estimated date is to conclude job. Ms. McKnight stated that with the tenant being out by July 7th, the project could be completed by the end of August 2018. Ms. Peterson stated that is too long to wait for the cesspool replacement. Ms. McKnight explained that since the tenant has 2 small children, if the septic work is completed while the occupant still resides then they will experience limited shower and water access which may prove to be a difficult living situation. She said that once warmer weather arrives, they can easily complete the window repair and estimated to have them completed no later than May 31st. Mr. Andrews asked Ms. Guarino's thoughts on the septic upgrade given that the contractors are able to get designs approved and start work on July 7th. Ms. Guarino stated that the owner must understand that until that time, frequent pump-outs may be required to maintain the system properly. Her personal opinion was that she is concerned about the owner postponing the upgrade until July 7th. Mr. Andrews asked how easily accessible the site is. Ms. Guarino explained that it is a smaller sized lot, but the system is pretty accessible with no major obstacles. The percolation test revealed clean sand, so there should be no need to remove and replace unsuitable soils. Ms. Peterson asked what Ms. McKnight's deadline for completed plans is. Ms. McKnight stated that if the Board will allow a review date during mid-May, the plans and all permitting will be completed at that time. If the project could wait until the tenant vacates the property, she believes that would be beneficial because she is concerned about any liability issues if the children get hurt during construction. Ms. McKnight continued that if the pump-outs are consistent she believes this should not be an issue. She said that if Ms. Guarino feels as though the owner is not complying, she may ask for any pump-out records that are completed and may call Ms. Starr before the Board at any time. Ms. Guarino stated that she would feel more comfortable with the project being completed prior to Memorial Day, which is a busy time of year for the Health office. The first Board of Health meeting in May will tentatively be on May 9th. Ms. McKnight stated that she will make that work. Ms. Mastria said that is plenty of time to get the system upgrade designed and approved. Mr. Andrews asked the audience for any further comments or questions, and there were none at this time. **Mr. Barlow made a motion to continue this item to the first meeting in May, which is tentatively May 9th, 2018. Ms. Peterson seconded, and Mr. Andrews asked for a roll call vote: Mr. Barlow, yes; Ms. Mastria, yes; Ms. Peterson, yes; Mr. Andrews, yes. All members were in favor, and it was a unanimous vote to continue this item to the first Board meeting in May.**

3. **Herring Run Motel—825 Scenic Highway—Jason Cheng, President-- Discuss outstanding violations of the State Sanitary Code and the Bourne Board of Health Hotel, Motel, and Guest Cabin regulations. Board of Health to consider issuing a finding that the dwelling which is being used as a rooming house is unfit for human habitation, and whether or not to issue an order condemning the dwelling, to vacate, and/or secure the dwelling pursuant to 105 CMR 140.831 and M.G.L. c. 111, §127B. Mr. Barlow abstained from participation and deliberation.** Jason Cheng and Attorney Robert Barber were present for this meeting. Kayla Davis, Health Inspector, explained that after a complaint received on February 1, 2018 there was a housing inspection conducted. Multiple violations were found during several inspections, including the joint inspection with the Building Inspector and Fire Department on February 8th of the rooming house. A re-inspection was completed today and there have been significant changes since the 8th. More than half of the original violations have been corrected, and those that are left are in the process of being completed. The septic system was pumped out within 24 hours of inspection and a percolation test has been scheduled. The electrical work has not been completed but Mr. Cheng has hired an electrician to start corrections. The boiler downstairs was inspected by Loud Fuel to determine repairs or replacement. Ms. Davis added that guest logs for the motel were submitted last minute before the start of the meeting, and distributed them to the Board for review. Ms. Peterson asked if the Board's questions will be directed to Attorney Barber or Mr. Cheng. Atty. Barber stated that questions may be directed to him and he will confer with Mr. Cheng if need be. Ms. Mastria asked if the septic system upgrade has been contracted. Ms. Davis explained that the application has not yet been received but the percolation test is scheduled for next Tuesday, February 20th and the system was pumped out on Monday the 12th. Ms. Guarino elaborated even further stating that in 2017, and Mr. Basinski can attest, that Bracken Engineering was contacted by Mr. Cheng and will be working on design and have preliminary plan to get the project in motion. Ms. Peterson asked why there are occupants living in an unlicensed rooming house. Mr. Cheng previously stated that he was under impression it was okay to lease rooms during the off season. Ms. Peterson asked if they occupied the cottages or the main house, both of

which are unlicensed. Ms. Davis stated that two of the occupants originally lived in the cottages but have since moved to the main house. One occupant who lived in the main house that did not have lease will be leaving the premises by the end of the week. Ms. Guarino added that there is a 4th occupant who obtained a lease for a room in the main house beginning in the fall. Ms. Peterson described the logs that were submitted to Ms. Mastria over the phone describing them as playing card-sized pieces of paper with just an address and check in/out dates. They are not bound in any book. There are also hand written logs similar to logs submitted by other motel establishments in the past which are insufficient. Ms. Peterson stated that the motel permit for this establishment is seasonal anyways, so it should not be inhabited during winter at all. She asked Attorney Barber what Mr. Cheng will do with occupants currently in the unlicensed rooming house. Atty. Barber stated that he is grateful for the assistance that has been given by the Health Department. He explained that once the occupants who are leaving in the next few days are gone there will be a total of 3 occupants, excluding the Cheng's, on the premises. To his understanding, 3 occupants or fewer is not considered a rooming house. This does not mean that the safety hazards and other violations do not need to be corrected. Quite a bit of work has been done, and that which has not been is scheduled to be completed. He stated that the electrician that has been hired and plans to start work at the beginning of the upcoming week which is February 19th. Ms. Peterson stated that Deputy Fire Chief Pelonzi sent an email discussing a remedy that the Board is unsure if they agreed with. Ms. Guarino stated that one significant issue that encompasses the entire property is the condition of septic systems, which are in failure and were in failure when the property was purchased. Mr. Andrews asked how long the buyers were given to correct the systems upon purchase. Ms. Guarino explained that an inspection was not conducted at the time of transfer. Ms. Peterson asked Atty. Barber if the property was actually purchased, assigned by a lease, or another method that did not trigger a sale of this property. Atty. Barber stated that he was not around at time that the transaction occurred, which was April 15, 2016. There is some dispute as to whether Mr. Cheng was appropriately represented at the time that this transaction took place. The form of the transaction was a sale of the shares of Herring Run Corporation. Atty. Barber stated that Mr. Cheng was told that there is no requirement to comply with or to have Title V Inspection around the time of transaction. Ms. Peterson asked if this was a sale of beneficial interest. Atty. Barber said no, it was a sale of shares. He is by no means defending the violations that are present. He said, "In the CMR, there is a reference made to a sale of beneficial interest in the same paragraph, or the same breath if you will, as a sale of shares of a corporation." He explained that although they are similar, it does not excuse the need to complete a Title V Inspection. Transfer stamps were paid at the time of the transaction. Ms. Peterson stated that although Mr. Cheng may have been misinformed, the Board must use information that is presented to the office due to being an elected board and not having legal assistance. She said the Board is trying to figure out, together with Mr. Cheng, how to move forward. Atty. Barber said all of the steps toward replacing the failed septic systems are being started and it is everyone's intention to complete this project within the next few months prior to May 2018. Ms. Peterson stated that although the system may be in the process of being upgraded, she would like to know what is going to happen with the occupants as they cannot stay there. Atty. Barber stated that the reference to Deputy Pelonzi's email is something he would like to discuss as a solution to this problem. He explained that the email stated an option for the occupants, not more than 3, to stay in the motel rooms until the violations on the inspection sheet are completed and the system is upgraded. Mr. Andrews asked for a recommendation from the Health Agent. Ms. Guarino stated it is difficult to say but the most important aspect is the immediate health and safety of the occupants as well as the protection of the environment by replacing the septic systems. She agreed with the idea of utilizing 3 rooms of the motel if they pass inspection, and it is satisfactory to the Board. She noted that Mr. Cheng did apply for his seasonal permit on time and has already paid the fee. Atty. Barber added that the permit was denied because of the failed septic system on January 30th. Ms. Peterson quoted the Hotel Regulation Sections 5-7 stating that Mr. Chang must not rent a room to one occupant for more than 3 weeks in a calendar year unless there is written permission from the Board of Health, and that the tenant has verifiable business travel. Mr. Cheng stated that his previous manager taught him this method of record keeping. He explained that during his first year running the property on his own, he worked hard and tried to do everything correctly. Right now, everything at the motel is changing to meet regulations, and the roof was recently replaced. Ms. Guarino stated that the leases provided to these occupants are due to expire on April 15th, 2018. Ms. Peterson stated that if he could utilize 3 rooms the heat and water would need to be turned on immediately, no later than tomorrow. In the meantime,

occupants must not be charged any rent, and this situation is unacceptable in the town. She stated that her personal opinion is that the occupants should be put up in a hotel or motel. Atty. Barber stated that there are no excuses for these violations and he agrees with her personal opinion. He stated that ignorance of the law is not an excuse, and going forward there will not be ignorance, period. Ms. Peterson asked Ms. Guarino again if she thought the email from Deputy Pelonzi is something that can work. She stated another alternative is for Mr. Cheng to temporarily put the occupants up in a motel or hotel at his own cost. And explained that it is unknown what the current condition of the heating system or water supply is in these units because they are for seasonal use. Also, it would be unsafe for the occupants to cook in the units, and there are concerns about frequency of trash removal and the rooms being cleaned daily. All of these housekeeping items are required to be done under a motel license. Atty. Barber stated that the electrician can complete the work he needs to do posthaste, starting with the electric heat in the rooms. He is aware that the rooms must be compliant prior to being occupied. Ms. Mastria asked if this is best remedy for current occupants. Mr. Andrews stated that it is a remedy, one that the applicant is offering. Ms. Peterson stated that there should be more than one remedy. This being one of them, and the other being that the occupants will be relocated until the property is in compliance. Mr. Andrews asked what the timeline is for the septic system to be completed. Mr. Basinski stated that it would be a minimum of 9 weeks until construction due to time allotted for percolation test to be completed, system to be designed, then a Conservation Commission hearing estimating the completion date to be a minimum of 16 weeks out. Ms. Guarino stated that Mr. Cheng will have to continue pumping as often as needed. Ms. Mastria asked if the cottages and motel rooms are insulated and ready for use in the middle of winter with just electric heat. Ms. Guarino stated that the cottages are not known to be adequately insulated, but it is unknown whether the strips of motel units are. Ideally there would be more information provided on that. Atty. Barber is unsure of the answer. Ms. Mastria asked Ms. Guarino if she believes that is a reasonable solution since she has seen the rooms in question. Ms. Guarino stated that if the heat and water can be maintained, she is unsure of the hot water heater location or if it is shared, that she believes it could work if Mr. Cheng is willing to make these arrangements within a short amount of time. Ms. Mastria asked if it would make sense to put the occupants into a hotel while the repairs to the property are completed. After that, the occupants could return to the rooms. Mr. Andrews and Ms. Peterson agreed that they are both leaning that way as well. Ms. Peterson explained that the occupants cannot stay where they are with the number of outstanding violations. She asked who the occupants on the first floor are, and Mr. Cheng stated that he and his family live there. Atty. Barber asked that if there were no more than 3 non-family occupants on the second floor, and the compliance requirements were completed, would it not be permissible for the occupants be able to stay. Mr. Andrews stated that according to regulations, tenants are not allowed to stay in manager's quarters. Ms. Guarino clarified that the definition of a rooming house, which is what is being referenced, is 4 or more renters living in the dwelling who are not related to the owner or manager and that essentially Atty. Barber is asking if the occupants can continue to stay if there are less than 4. Atty. Barber understands the circumstances and appreciates the Board's consideration on this. He stated that he is trying to avoid incurring unnecessary expenses for Mr. Cheng by putting the occupants into another hotel or motel if they are able to temporarily stay in the main house. Mr. Cheng is willing and prepared to make the necessary repairs and Atty. Barber was hoping for modest amount of flexibility to complete them. Ms. Guarino did not have any further comments due to the uniqueness of the situation and would be happy to clarify anything that is questioned. Ms. Mastria asked how many critical violations still need to be completed. Ms. Guarino said that the 24 hour violations, minus the septic system repair, total 4 violations. Ms. Mastria stated that she has a problem with 4 critical violations, knowing it must be rectified. She explained that if the Board were to say "Do whatever you need to do", it would send a misleading message to other motels and hotels who have corrections that need to be made. Critical violations are critical violations, and they must be corrected within 24 hours. If not, then the occupants must be accommodated until the violations are remedied. Ms. Peterson stated that she agrees that occupants should be moved immediately until the critical violations are taken care of, the heat and water are running, and they are warm, clean, and livable. They must be inspected by the Health office and once everything is done, the Health Agent has the authority to grant a temporary, conditional license to let the occupants move into the 3 units while the rest of the property, including the septic system, is completed. Ms. Guarino stated that she is comfortable with that. Mr. Andrews asked if there was any further discussion from the Board or the audience. **Ms. Peterson made a motion to relocate occupants to a motel of Atty. Barber**

and Mr. Cheng's choosing until the critical violations are taken care of in the main house. The idea is to move the occupants back into motel rooms 2, 3, and 4 once all of the violations are corrected. Mr. Andrews clarified the motion explaining that Mr. Cheng must put occupants into a motel until the critical violations satisfy the Health office's requirements. Also, the property must undergo another inspection in which they receive a passing report excluding the septic system due to it being designed currently. Ms. Mastria seconded the motion. Mr. Andrews asked if there were any further discussion. Atty. Barber stated that with the correction of these major violations are in the main house, and he is not minimizing any of the violations but believes the most efficient way of proceeding is to get rooms 2, 3, and 4 able to be occupied in the ways that were described. The electrical work to be done, if it is being done in rooms 2, 3, and 4, could be done roughly on Friday or Saturday. If rooms 3 and 4 can be finished and have occupants moved back in with a commitment and short leash on completing work to be done in the main house, he believes that seems to be the easiest solution of relocating people with great advantage of keeping cost down for Mr. Cheng. Ms. Peterson amended her motion to include Atty. Barber's request. Mr. Andrews asked for a roll call vote: Mr. Barlow, abstained; Ms. Mastria, yes; Ms. Peterson, yes; Mr. Andrews, yes.

4. **Food Establishment Permit Noncompliance**—The following establishments were found in violation of The State Sanitary Code, Chapter X, 105 CMR 590.000 for failing to submit an application to renew their Food Permit for the 2018 calendar year, failure to pay requisite permit fee, and for the operation of the facility without a permit. Discussion and possible vote regarding penalty for violations, license conditions, and possible denial of issuance of food permit. *Mr. Barlow abstained from participation and deliberation.* Ms. Guarino explained that she prepared a presentation to give a brief update on the 2018 Food permits. It is required in the Food Code that renewal applications be submitted at least 30 days prior to the date of expiration on any current permits. Once an application is submitted to the Health office, it is reviewed, approved, the fee is paid, and the establishment is inspected to ensure that they are in compliance with the applicable codes. All completed applications were due to the office on December 1, 2017. 120 out of 122 establishments were in compliance, and the 2 that were not will be addressed this evening. All food establishments had just about the same contacts. Mailings went out October 29th and December 26th. January 22nd and February 7th there were phone calls placed, emails sent, and additional mailings sent. The office used the contact information provided by those holding permits. All efforts were exhausted to reach these 2 establishments, so on February 9th notices were posted.

- **Just For You Nutrition - 73 Cranberry Highway, Sagamore—LaToya Johnson, Owner—Retail Food Permit.** LaToya Johnson, business owner, is present for this meeting. Just for you Nutrition is a new retail food business in the town as of 2017. Ms. Guarino explained that she spoke to Mrs. Johnson on the telephone to discuss late fees and Mrs. Johnson was not pleased. Ms. Guarino asked her to submit letter of request to the Board of Health. On January 24th Mrs. Johnson submitted her application to the office, but did not submit any payment or the letter of request. The next day, Ms. Guarino spoke to her on the phone and again asked for the letter and discussed payment. After the notice and agenda was posted and some subsequent mailings were sent out on February 9th, the office received a \$75.00 payment on February 12th in the mail. As of that date, there were additional outstanding late fees accrued in the amount of \$300.00. On February 13th Ms. Guarino spoke to with Mrs. Johnson again on the telephone about the letter of request to have the fees abated, which the office received today. This establishment is in compliance as of their last inspection on December 18, 2017. The office has received all of Mrs. Johnson's materials other than the late fees applicable to this establishment since no payment was received until February 12th. Mr. Andrews said that a request for abatement was not listed on tonight's agenda. Ms. Guarino reiterated that the letter of request was only received today. Ms. Peterson clarified that the request was also made in January but only over the telephone. Mr. Andrews asked if Mrs. Johnson would like to speak about why she was so late to submit her permit application. Mrs. Johnson stated that she didn't know that the permit had to be renewed on the calendar year, she thought it was valid for a year after application. She also explained that initially, she provided the wrong mailing address. She said she should have put her home address but got confused. Ms. Peterson clarified stated that although Mrs. Johnson was

not aware that the permit was renewable on the calendar year, Ms. Guarino has record of many instances in which it was explained prior to this meeting. Ms. Peterson stated that obtaining a food permit is not a right, it's a privilege, and the ignorance of the law does not exclude anyone whether they are new business or an old business. Mr. Andrews asked Ms. Guarino if they were found to be in compliance during their last inspection. Ms. Guarino said yes, but there has been no inspection conducted since December 18th. Mr. Andrews asked when an inspection could occur, and Ms. Guarino stated any time during regular business hours. Typically for a retail food store being in full compliance, inspections would be conducted once every 6 months. The more significant concern is getting the late fees paid and a decision on the issuance of a food permit. Ms. Peterson stated that she does not feel she should be abated of the late fees. December 31st is the absolute latest date for submission and there were 120 other establishments that were inclined to submit their materials on time. It is too late, late fees must be paid and Mrs. Johnson will know for next year to submit everything on time. Ms. Peterson continued by saying she would be willing to work with Mrs. Johnson on the payment of these late fees, but they must be paid. Mrs. Johnson explained that she does not have extra money to pay fees. Ms. Peterson understood and offered to work with Mrs. Johnson on a payment plan. Ms. Mastria stated that she agrees that the fines are in place for a reason and that all other establishments were able to meet the deadline. She agreed to enforce the \$300.00 in late fees over a period of increments, and stated that would be more than fair. Mrs. Johnson explained that the establishment is not that busy and the location makes it hard for customers to get to the store. Ms. Peterson stated that she is willing to work with Mrs. Johnson for however long it takes her to pay them, but it is not fair to waive fees for this establishment if another must be charged. The reason the regulations are in place to protect the health of customers using the store. Ms. Peterson made a motion that at the next Board of Health meeting Mrs. Johnson returns with a payment schedule for the late fees that would be reasonable for her. Ms. Mastria added that she could also submit her payment schedule to the Health office prior. It can be reviewed and possibly approved at the next meeting, and at that time she will be allowed to obtain her permit. Ms. Mastria seconded the motion. Mr. Andrews asked for any further discussion, and stated that he is not in favor of the motion. He explained that Mrs. Johnson will be responsible for late fees whether a payment plan is made or not. He stated that a 30 day conditional permit be issued tomorrow, and a payment must be received within 30 days or have a payment schedule ready for the next meeting. After 30 days, Mrs. Johnson must reapply, but does not include another fee since she has already paid that for the year. Mrs. Johnson asked if she needs to pay a full \$300.00 or if she can pay \$150.00 since she visited the office when the fee was that amount. Ms. Guarino stated that the application states that the late fee is strictly outlined on the application itself and all establishments were previously advised that the fee amount increases weekly. **Mr. Andrews requested that the previous motion be withdrawn and that a 30 day license be issued and a payment plan be made if \$300 is not paid in full. Ms. Peterson and Ms. Mastria withdrew their original votes and Ms. Mastria seconded Mr. Andrew's motion. Mr. Andrews told Mrs. Johnson to be prepared in the event that the abatement is denied, and asked for a roll call vote: Mr. Barlow, abstained; Ms. Mastria, yes; Ms. Peterson, yes; Mr. Andrews, yes.**

- **Iron Maiden, Inc. DBA Trowbridge Tavern - 109 Trowbridge Rd, Bourne—Mary Ellen McCarthy, Owner--100+ seat food service establishment.** *Mr. Barlow abstained from participation and deliberation.* Mary Ellen McCarthy, property owner, was present for this meeting. Ms. Guarino stated this establishment, too, was brought before the Board of Health for failure to renew their 2018 food permit. The Health office did not receive any response from the owner until a notice was posted on the establishment door on February 9th, and by end of day a completed application was filed. An inspection was conducted this afternoon. Ms. Peterson asked for the audience to turn to the projector, so that the Board may explain why this establishment has been under careful consideration for a 2018 permit. She stated that in addition to the missing paperwork, the establishment has a history of noncompliance and has had many repeat public health code violations. The health of the

Town of Bourne, its residents and visitors, has to be taken into consideration in all of the Board's decisions. Ms. Peterson read the slides aloud:

- ✓ Food permit applications submitted AFTER DECEMBER 1ST in SEVERAL CONSECUTIVE years past
- ✓ No response from mailings, emails, and telephone calls placed to owner until February 9th
- ✓ Completed permit application received end of business on February 9th after public hearing posted
- ✓ 105CMR590.012(H)(2): EACH CONSTITUTE FULL AND ADEQUATE GROUNDS FOR REFUSAL TO ISSUE A LICENSE
 - Failure to submit a permit application in accordance with the board of health's procedures;
 - Failure to submit the required permit fee IN ACCORDANCE WITH PROCEDURES;
 - The applicant operated the facility without a permit;
 - Failure to comply with provisions of 105 CMR 590.000;
 - Other reasons which pose a risk to public health and safety.
- ✓ 105CMR590.13 & CHAPTER 8-401.20: IF establishment IS ISSUED A PERMIT IT MAY be subject to conditions DUE TO Past performance:
 - for nonconformance with Code INCLUDING NUMEROUS VIOLATIONS AND REPEATING VIOLATIONS WHICH ARE CRITICAL;
 - FOR NUMBER OF COMPLAINTS INVESTIGATED AND FOUND TO BE VALID;
 - FOR THE NUMBER OF PEOPLE SERVED; AND
 - THE TYPE OF OPERATION INCLUDING THE METHODS AND EXTENT OF FOOD STORAGE, PREPARATION, AND SERVICE.
- ✓ NUMBER OF HEALTH INSPECTIONS NEEDED TO ENSURE COMPLIANCE WITH MINIMUM STANDARDS:
 - 2014: FOUR INSPECTIONS
 - 2015: FIVE INSPECTIONS
 - 2016: FOUR INSPECTIONS
 - 2017: FIVE INSPECTIONS
- ✓ Two per year the standard
- ✓ EXAMPLES OF NUMEROUS OR REPEAT VIOLATIONS OF THE CODE:
 - IMPROPER DATE MARKING & DISPOSITION
 - FOOD CONTACT SURFACES CLEANING AND SANITIZING ISSUES
 - NON FOOD CONTACT SURFACES CLEANING AND SANITIZING
 - INSECTS PRESENT; REMOVAL OF DEAD OR TRAPPED PESTS

Next, images of the past inspection reports and today's report were shown. During today's inspection, there were 4 critical violations and 2 noncritical violations determined. Ms. Peterson stated that the Board has chosen not to use a grading system in the past, but if it were in place this establishment would have received an F today. She was hoping for better seeing as though the establishment has been closed since the 9th and was given 24 hour notice of the inspection. Ms. Peterson stated that "The Trowbridge Tavern was shut down due to the inability to follow the rules and regulations set forth by the state and the Town of Bourne. The Board of Health and its agents are put in place to help keep the health and well-being of the public safe, and to enforce the rules and regulations, period. The Bourne Board of Health takes this position very seriously, and makes it a practice to work with citizens and businesses as much as they can and as discretely as they can when a situation arises. This is mainly why these meetings are not televised. When there is a violation, the Board of Health has always had an open door policy to help correct said violation. With that being said, the Board has offered many voluntary closures to the businesses in the town of which she believes the public is not aware of. No one, including the Board of Health, is dismissing Mary Ellen's contributions to this community. For those efforts, she should be truly commended. The issue is the physical space that

she operates her business out of, and how it compromises the health and well-being of the people who eat and drink there. It is unfortunate that this has come in front of the Board, and it is not going to be a pleasant conversation for anyone to have." Ms. McCarthy said that after the inspection was completed today, she went through and took care of all violations except the corners of the floor and some degreaser on floor that will be cleaned tomorrow. Mr. Andrews read the 4 critical violations which were:

- ✓ Food products prepared in house need to be labeled and dated. Example: sliced potato wedges, marinara, and veggies not labeled/dated;
- ✓ Expired food products past due greater than 7 days;
- ✓ Food contact surfaces cleaning and sanitizing including the deli slicer must be cleaned and sanitized prior to use;
- ✓ 1 out of 5 traps had cockroaches within- thoroughly clean and sanitize facility

Mr. Andrews stated that the establishment was closed for 6 days and he assumed that workers would have gone through that food during that time and corrected that. He explained that within the report, the Agent included the establishment was in better shape than she has seen it in the past. The outdated food violation is common violation that is continuously found. This means that there is food that is outdated and being served. Receiving that violation once should warrant efforts to be brought into compliance and this should never happen again. There should be policies and procedures for that. He stated that multiple violations give him the impression that there are no procedures in place or that no employees are following them. This violation may causes customers to become ill, and that is why it is considered a critical item. Ms. McCarthy stated that she has been ill herself and was not able to complete a clean sweep today. Mr. Andrews explained that this violation is on nearly every inspection report which means someone isn't paying attention. Ms. Peterson stated that she has photos that were taken during inspections, and she can guarantee that many audience members were unaware of the severity of the violations being discussed. The audience collectively disagreed, and Ms. Peterson passed the photographs around to be viewed. She apologized in advance for having to share these photos, but explained that this is what the Board is trying to eliminate. Ms. Guarino explained the photo taken February 9th showing a repeat violation where outside storage needs to be covered, and trash and recyclables removed. And those from earlier in the day, where there were expired food products. All food products including those that are removed from their original packaging, or prepared on site must be labeled and dated. It is extremely important to have any foods prepared in-house to be dated properly indicating their shelf life. Unfortunately, this is something critical that has come up many times. Earlier today, photos were taken behind the line of storage areas loaded with food and grease accumulation thta does not meet the minimum sanitation standards. Some other repeat violations from the September 25th inspection report were discussed. This inspection was very concerning, resulting in an 8 page inspection report. A picture was shown with the kitchen floor covered in grease, food and dirt, another included an insect trap full of cockroaches, and another was a photo of a soda nozzle with mold on the inside of the spray head. An audience member asked to clarify when these photos were taken. Ms. Guarino explained the photos she was currently viewing were taken on September 25th. The audience member stated "Why don't we address the inspection that we are here for today." Ms. Guarino explained that the inspection report and photos from today were shown and discussed a few minutes ago. Dana Tobey, Bourne resident and supporter of Ms. McCarthy, stated that he respects the Board and thanked them for hosting such a large audience. He asked if tonight's meeting was regarding a history of violations. Mr. Andrews said, "No, we are here for the renewal of her license. If there are violations within the last year, they must be taken into consideration for the renewal of a permit." Further, he stated that the permit was applied for 6 weeks late. This is all part of a review on whether or not to issue a new license. Mr. Tobey asked if Ms. McCarthy was notified that she was in violation of the paperwork or that her permit renewal was being reviewed based on her past history of violations. Mr. Andrews answered yes, and continued by reading a letter sent to Ms. McCarthy dated February 7th, 2018. He reads, *"It has come to the attention of the Bourne Health Department that Trowbridge Tavern has been operating without obtaining the necessary permits from the Town of Bourne. In order to be in compliance with*

the 1999 Federal Food Code and the Massachusetts Department of Public Health (MDPH) 105 CMR 590.000 The State Sanitary Code, Chapter X, Minimum Sanitation Standards for Food Establishments, it is necessary the food establishment be properly licensed prior to the preparation, packaging, service, or vending of food for human consumption regardless of whether there is a charge for the food. A food permit is necessary to serve food products to the public. It is essential that a permit to prepare, package, serve, or vend food for human consumption be obtained prior to operation. Failure to apply/renew for and receive such a permit is grounds to refuse to issue any future permits to the applicant in Bourne and can be subject to fines. 590.012: Permit to Operate - federal 1999 Food Code Chapter 8-3 (H) Conditions for Issuance. (2) Refusal to Issue a License: Grounds and Notice of Refusal. The board of health may refuse to issue a permit, initial or renewal, based on one or more of the following grounds. Each of the following grounds shall constitute full and adequate grounds to refuse to issue a permit. The notice of refusal shall provide the grounds upon which the denial is based and shall notify the applicant of the right to a hearing provided in 105 CMR 590.015(B). (a) Failure to submit a permit application in accordance with the board of health's procedures; (b) Failure to submit the required permit fee; (e) The applicant operated the facility without a permit; 590.019: Criminal Penalties (A) Violation of 105 CMR 590.000 Provisions. Any person who violates any provision of 105 CMR 590.000 shall, upon conviction, be fined not more than \$100 for the first offense and not more than \$500 for a subsequent offense unless a different penalty is set by statute. It is also your responsibility to pay any and all late fees that are set by the Bourne Health Department. In addition to the above noted Board of Health concerns, it is your responsibility to file for, and receive any other licenses/permits required by the Town of Bourne, including the Town Administrators office." Mr. Andrews added that he also had a letter in front of him dated January 22nd, 2018 explaining that she had incurred late fees and was not in compliance due to the failure to renew her permit. There was also an email that was sent to her that day, in December, and initially in October. Ms. McCarthy stated that she had a new email address and that is why she did not receive the email. Mr. Andrews explained that it is her responsibility to update any contact information if it changes so that the Health office may contact her. Ms. McCarthy also added that she didn't receive any calls or messages from the Health office, but Ms. Guarino stated that the office did attempt to reach her via telephone. Mr. Tobey did not have any further questions for the Board and continued by explaining that he recently left a position in law enforcement. He stated that laws are "guidelines" and that there is "a word called discretion" that can be used in regards to the law. He left his position because law enforcement wanted all laws to be followed by the book with no discretion and asked that the Board exercise their discretion toward Ms. McCarthy. Ms. Mastria stated that she saw on social media that Ms. McCarthy reached out for support at tonight's meeting. She asked how the audience members were going to support her, and if they were willing to put in the work to clean the establishment to help it pass inspection. She stated that if everyone pulled together to help out, the Tavern could be as great as Ms. McCarthy is. It seemed to her that this meeting could be just the blessing in disguise that Ms. McCarthy needs, and the community that she so graciously gives to can turn and give back to her and get her back on track. Attending a public meeting and arguing over who the audience believes to be wrong and right is not going to help the situation at hand. Mr. Andrews asks for any further discussion from the audience. Tiffany Moran, kitchen manager for 3 months, stated that she has been working toward turning the kitchen around and making it what it is now since she became employed. She claimed that the onion rings in violation were prepped the day of the closure. The kitchen was busy with other things and dating them slipped her mind, and she takes responsibility for the violations that were found today. She explained that Ms. McCarthy has been ill since she was hired, and as the kitchen manager she has tried her hardest to step up. She asked that the Board give Ms. McCarthy the courtesy that she has given the town in the past. There are new employees at the establishment that will be in charge of the paperwork and cleanliness. Ms. Peterson asked if Ms. Moran could please keep her discussion's topic on the violations at hand and not Ms. McCarthy's contributions to the town since it is not related. She asked what the kitchen staff has been doing since the business was closed on Friday and why they have not corrected simple violations in that amount of time. Ms. Moran stated that she was there every day since the closure trying to get everything on track. Mr. Andrews said that there should be an inventory taken every day to ensure that all products are up to date and are not in violation. Ms. Moran said that she completed an inventory of the fridge within the first day. She was not aware that the meeting would be this evening until the last minute. Ms. Peterson stated that the Health Inspectors do not have to announce

when they are coming to do an inspection. Ms. Guarino gave Ms. McCarthy a courtesy call the day prior which gave the staff 24 hours to make sure everything was labeled and that there were no critical violations, and still did not pass. She understood that sometimes businesses become busy and things may get overlooked, but after being closed for 6 days, she still has 4 critical violations at the time of a Board of Health hearing. She asked Ms. Moran why these violations have not been corrected and why the Board is being asked to overlook these violations. Ms. Peterson stated that even if Ms. McCarthy was too ill to help, she is the kitchen manager and the inspection did not take place until 11:30 am today so she had the whole morning to correct the violation and still it was not done. Audience member, Nick Cox, asked for the Board to reread the critical violations, and Ms. Mastria did so. Ms. Guarino also clarified that there were other food products past due, and the example of onion rings were not the only food item in violation. There were other items in the walk-in refrigerator in violation as well. She wrote the onion rings on the inspection report as one example. Ms. Moran interjected that the onion rings were not older than 7 days. Ms. Guarino provided a photograph of the bin of onion rings dated February 6th, 2018 which is 8 days from today's date. Ms. Moran stated that they were sliced the day the business was closed, but Mr. Andrews said that they should have been relabeled with the correct date and they would not have been in violation. He was hoping for a clean shot, and was disappointed when he learned of the 4 critical violations. He explained that she should be ashamed that as a kitchen manager, her kitchen failed with so many violations. Ms. Moran stated that she understands that it is currently not very good, but in the past it has been a lot worse. She stated that the cockroaches are dead now, but Ms. Peterson explained that it matters that they were there in the first place. Ms. Moran said that the business is the best that it has ever been, and Ms. Mastria said that if this is the best that it has ever been, it is obvious how bad it has been the past. Ms. Peterson added that all of the voluntary closures of the past have been kept as discrete as possible and the Board has worked with Ms. McCarthy on these issues. Mr. Andrews stated that he would like to see a written procedure explaining how Ms. McCarthy plans to correct the violations and keep the establishment free from future violations. Ms. Mastria stated that audience should be helping her since they're all here supporting her. They should roll up their sleeves and help out to get the restaurant back to a standard where there is no violations at all. She explained to the audience that she hopes they understand that this is not something that happened overnight, these are violations that have been there for a long time. Mr. Andrews stated that he has a hard time issuing a permit tonight with 4 remaining critical violations. He explained that the Board and the office want to work with businesses, but cannot help if there are violations exposed to the public. Ms. McCarthy asked if she could obtain a permit if she agreed to inspections every week or two weeks. Mr. Andrews stated that conducting inspections that often would be a burden on the Health office, especially when there are only 3 Inspectors for the entire town. Ms. Peterson explained that not only did the Board take into account the entire audience present tonight, but also any customers of the business to avoid a food borne illness. The liability is massive, and it is unacceptable for the Board to approve a permit while violations still exist. Mr. Andrews said he would like policies and procedures created to give the employees aid. Ms. Peterson stated that once everything is completed and there are absolutely no violations, call the Health office to schedule an inspection and it will be conducted within 24 hours. Ms. McCarthy's nurse, Ms. Riccardi, stated that with Ms. McCarthy's consent she would like to inform the Board that from date of awareness to the violations until the most recent inspection, Ms. McCarthy physically was incapable of making changes during that time period. Ms. Peterson stated that if Ms. McCarthy had just gotten her application in and explained that she is very ill, there could have been some sort of understanding as to why there are so many violations. Ms. Peterson explained that she is extremely upset about having to close any business in the town or keep anyone from working. She said, "I could cry right now thinking of it, and anyone that believes that we want to shut someone's business down on purpose is fooling themselves." She stated that Ms. McCarthy deserves everyone's help, but the Town of Bourne also deserves a Board of Health that is the best that it can be. The Board cannot turn the other cheek for Ms. McCarthy just because of her philanthropy because there are many other business owners in Town who do the same and may not be as well known. Further, she said that for those who believed that the Board

could just put a meeting together immediately to allow Ms. McCarthy to be heard as soon as possible were incorrect. The Board must follow strict open meeting laws such as giving 48 hours' notice of a public hearing and posting a meeting agenda no less than 48 hours prior to the actual hearing, etc. There also must be a quorum to have any deliberation, and unless there is imminent health threats a special meeting cannot be held. Audience member, Tony Furtado, asked if the Board is looking for a plan of correction to get this restaurant up and running again. He is willing to offer his services as a licensed, ServSafe certified food service director to help get some policies and procedures in place. He has over 30 years of experience and felt that he can help aid in the continued compliance by creating new policies and procedures for the future. Mr. Furtado agreed with the Board that the folks in the audience have to pull together and help out in order for the business to be ready to open as soon as it can. Michael Blanton, Bourne Selectman, has heard and witnessed a lot of work being done lately. He asked if the next inspection passes, are there requirements to be granted a permit. Mr. Andrews stated that the Board can give that authority to the Health Agent if it is voted that way. Mr. Andrews asked if there were any further questions on this topic. Mr. Andrews suggested a 90 day conditional permit gets issued. Ms. McCarthy will not have to pay each time, but the permit must be renewed every 90 days. Given that there are no future critical violations, the permit can be subject for an annual review in December of 2018. Audience member, Bob Green, stated that he agreed there should be no violations that occurred, however most food in violation would have been consumed prior to today's inspection. He also asked how it was determined that the infestation was centralized in the restaurant and not in the attached motel. Ms. Guarino explained that she has been in contact with the contracted pest control company who stated that upon inspection there were no pests found at the motel. The problem seems to only be localized in the kitchen. Mr. Andrews asked for any other questions or comments, to which there were none at this time. **Ms. Peterson made a motion that Iron Maiden Inc. DBA Trowbridge Tavern, owner Mary Ellen McCarthy, not be issued a permit this evening or until all items listed on the inspection report dated February 14, 2018 are corrected and there are no additional critical violations. At that point, the establishment will be re-inspected by the Health Inspectors within 24 hours of the call into the office. If there are no other violations, and all current violations are corrected, a 90 day permit can be issued without repayment. This permit will be renewable every 90 days and undergo various inspections at the discretion of the Health Agent and Inspectors requirements. At that time, the office may issue another 90 day permit without Ms. McCarthy reappearing before the Board of Health. Further, signage and manuals for the staff to work with regarding the policies and procedures must be posted prior to reopening. Mr. Andrews stated that the progress of the establishment will be reviewed at a Board of Health meeting in December of 2018. Ms. Mastria seconded the motion.** Mr. Andrews asked for any further discussion from the Board or the audience. Nick Cox, audience member, asked if a previously planned post-funeral dinner for Marine Becket Kiernan could still be held in the establishment itself if the event was catered. Mr. Andrews stated that if an inspection could be completed and passed before Friday then the business could open for the evening. Ms. Guarino stated that it is not up to her whether the violations get corrected or not, but she does not believe that it is unreasonable that they would be so by Friday. Mr. Blanton asked the Board to clarify the motion, and Mr. Andrews did so. **Mr. Andrews asked for a roll call vote: Mr. Barlow, abstained; Ms. Mastria, yes; Ms. Peterson, yes; Mr. Andrews, yes. The motion passes with three members in favor and one abstention.**

5. **General discussion and update on 2018 Industrial Wastewater Hauler Permits.** Ms. Guarino stated that this was the new requirement for DEP to issue these permits. There have been 4 Industrial Waste Haulers who obtained a permit from the Board of Health. One that may be relevant to the town of Bourne is JP Noonan who is the leachate pumper for the Bourne landfill. Mr. Andrews asked if this includes all Industrial Haulers throughout the town and if all who haul Industrial waste off of Cape Cod have to be permitted in the town. Ms. Guarino said that is correct, the 4 permitted companies in town are JP Noonan, Graham Waste Services, Baker Commodities, and Lombard Waste Services Inc. The office reached out to these companies to

determine who conducts work in town and this is what has been received as of today. Some companies may overlap with Septage Hauling permits. **There was no necessary action to be taken at this time.**

6. **Approve the Minutes from the meeting dated January 10, 2018. Ms. Peterson made a motion to approve the minutes from January 10, 2018. Mr. Barlow seconded the motion, and all were in favor.**
7. **Set tentative date for next meeting and adjourn. The next meeting was tentatively scheduled for February 28, 2018 at 7:00 pm.**

Ms. Peterson made a motion to adjourn the meeting. Ms. Mastria seconded the motion. Roll call vote to adjourn: Mr. Barlow, yes; Ms. Mastria, yes; Ms. Peterson, yes; and Mr. Andrews, yes. All were in favor, and the meeting adjourned at 9:36 pm.

Taped & Typed by Meghan McLean, Secretary

Kathleen Peterson _____

Stanley Andrews _____

Galon Barlow Jr. _____

Don Uitti _____

Kelly Mastria _____

cc Board of Selectmen/Town Clerk

