



Terri A. Guarino  
Health Agent

# TOWN OF BOURNE BOARD OF HEALTH

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TOWN CLERK BOURNE

## MINUTES January 27, 2021

Members in attendance: Galon Barlow Jr., Vice Chairman; Donald Uitti; Kelly Mastria and Stanley Andrews.

Support Staff in attendance: Terri Guarino, Health Agent; Kaitlyn Shea, Health Inspector; Stephanie Fitch, Health Inspector and Syreeta Amaral Administrative Assistant

### Meeting was called to order at 05:00pm

*Mr. Barlow Jr. asked if anyone was recording at this time..*

- 1. Discussion and possible vote on vacancy in Board of Health (M.G.L. c. 41, §11)** – Mr. Barlow Jr. asked Miss Guarino to read the agenda item on the record. Miss Guarino stated “pursuant to MA general laws chapter 41 section 11 the remaining Bourne Board of Health members can decide whether or not to fill Kathy Peterson’s vacancy now or to wait until the May 2021 annual town election. If someone is appointed to the vacancy they would be picked at a joint meeting between the Bourne Board of Health and the Bourne Board of Selectman and would serve until the next annual town election. If they wanted to continue to serve on the Board at that time the person would have to run for reelection on the May 18, 2021 ballot. Miss Guarino continued by explaining that the next step that the Board needed to take was to inform the Clerk’s office that and the Board of Selectman whether or not the remaining Board of Health members would like to fill Kathy’s vacancy prior to the May 18, 2021 election. Mrs. Mastria stated that he believed that filling Kathy’s spot would be a good idea. Mr. Barlow Jr. he was also in favor of filling the vacancy. He asked Miss Guarino whether or not the Board had to make a recommendation. Miss Guarino replied that the Board could make a recommendation. Miss Guarino stated that the Board could make a recommendation. Mrs. Mastria asked whether or not the Board had to make a recommendation at this meeting or if they could make their recommendation to the Selectman through the Office. Miss Guarino replied that the Board needed to vote to fill the vacancy within 30 days of the vacancy and that the decision on the person to be appointed would not have to be voted on at this meeting. Mrs. Mastria thanked Miss Guarino for the explanation. Mrs. Mastria made a motion to fill the vacancy on the Board of Health pursuant to MA general law 41 Section 11 to notify the Board of Selectman and the Town Clerk within 30 days of their intention to fill the vacancy. Mr. Uitti seconded the motion. Roll call vote to approve Mrs. Mastria...yes, Mr. Uitti...yes, Mr. Barlow Jr....yes. All were in favor and the motion passed. Mrs. Mastria asked Miss Guarino what date the person appointed would serve to. Miss Guarino stated that she thought the newly appointed Board member would serve until the May 18, 2021 election. Mr. Andrews joined the meeting and asked Miss Guarino what the question was. Miss Guarino repeated the question. Mr. Andrews stated that the newly appointed Board member would serve until the next annual town election. Mr. Barlow Jr. asked if there were any more questions. There were no further questions from the Board or from the audience.
- 2. COVID-19 and Phased Re-opening Plans—Terri Guarino, Health Agent to provide information and updates. The Board of Health to discuss and possibly vote as necessary.** Miss Guarino started by stating that Governor Baker announced the start of Phase II in the COVID-19 vaccination schedule and that in some locations as soon as February 1<sup>st</sup> priority group 1 within that phase could start to receive their vaccinations. This phase includes populations of people that are 75 or older. She noted that while this has been announced, the Town of Bourne had

not been allocated any supply of vaccinations for their residents but the Health Department has plans ready to distribute the vaccinations if a supply is issued. Miss Guarino continued by stating that there are multiple regional sites that will be opening to supply vaccinations to the community with the closest site being located at the Barnstable County Fairgrounds in Falmouth. She stated that Barnstable County as whole is going to be receiving 975 doses of the Pfizer COVID-19 vaccine from the State of MA. There are also a couple of pharmacies on Cape Cod that have been allocated a small supply of vaccines. With supply numbers being so low that Barnstable County Public Health Department has issued a statement which will be posted on the Town of Bourne's website regarding these challenges. The Health Department and the Council on Aging have been receiving a tremendous amount of phone calls with questions regarding how to sign up for the vaccine and the two departments have been working together to identify populations that would have a hard time using the internet to register or that do not have internet access. Miss Guarino continued with stating that the total number of COVID-19 cases within the Town of Bourne is approximately 800 confirmed cases and that the town's average is 43 cases per day. Mr. Barlow Jr. asked if there were any questions. There were no questions from the Board or from the audience.

3. **Health Department Updates – Kaitlyn Shea, Health Inspector and Stephanie Fitch, Health Inspector to provide updates regarding license renewals. Discussion and possible vote on late fees.** Ms. Stephanie Fitch updated the Board on matters concerning permitting for the year of 2021. She stated that all but 2 of the food establishments have successfully been permitted. The food establishments that had not been permitted by the time of the meeting were the Talk of the Town Diner and the Knights of Columbus. Ms. Fitch stated she had been in contact with the owner of the Talk of the Town Diner and that she expected the establishment to be fully permitted by the end of the week. The second establishment that has not been permitted is the Knights of Columbus. At the time of the meeting The Knights of Columbus had not returned any of the Health Department's emails or phone calls. She continued with the permitting updates by explaining that the 2 Body Art Establishments and 1 pool had not been permitted at of the time of the meeting. The first Body Art Establishment Diamond Mind Tattoo she had been in contact with was working on getting all of the required documents to the Health Department and she expected them to be fully permitted by the end of the week. The second Body Art Establishment in town Sharks Bite Tattoo had not returned any emails or phone calls to the Health Department and that a notice of late fees was sent to the establishment on January 19<sup>th</sup>. The unpermitted pool was the pool located at the Mass Maritime Academy. Ms. Fitch continued the update the Board by stating that all of the Tobacco Establishments, Body Work Establishments, Bed and Breakfast Establishments and Hotels/Motels had been fully permitted. She stated that she would leave it to the Board to discuss what to do with Sharks Bite Tattoo and the missing permit to operate a pool. Mr. Barlow Jr asked if there was any input from the Board on this matter. Mr. Andrews suggested that we call the Mass Maritime in regards to the pool to ascertain whether it was open in the time of the pandemic. He also suggested that the Health Department stop into Sharks Bite Tattoo to hand the owner the and post the notice and if the owner does not respond to that then to fine the establishment. Ms. Fitch stated that the notice of late fees was sent out certified mail and that the letter was signed for but the Health Department would stop into the establishment tomorrow (January 28<sup>th</sup>) to follow up with the owner. Mr. Andrews stated that he thought this would give the owner an honest chance to let them know what is going on and to see if the business is still in operation. Mr. Barlow Jr. asked if any of the other Board members had anything to add. Mrs. Mastria stated that she had nothing to add. Mr. Uitti had noted that he was in full agreement with Mr. Andrews. Mr. Barlow Jr. asked if there was a motion. Mr. Andrews made a motion to have a site visit be conducted at Sharks Bite Tattoo and that if there was no response from that visit placard the establishment as closed and to fine the establishment for operating without a license. Miss Guarino stated that typically in this type of situation the fine would be 50.00 a week until the issue is resolved but if the establishment is running their business without a license the Board could choose to institute a fine for operating without a license. Mr. Uitti seconded the motion. Roll call vote to approve. Mr. Andrews...yes, Mr. Uitti...yes, Mrs. Mastria...yes and Mr. Barlow Jr....yes. All were in favor and the motion passed unanimously. Mr. Andrews asked what the status was with the Mass Maritime Pool. Miss Guarino replied that the Mass Maritime has been closed and that the students had not moved back in since Thanksgiving. She stated that the students were due to move in sometime in February and that the MMA had canceled their sports so she did not believe that the pool was in operation they had been keeping up on the maintenance of the pool. Mr. Barlow Jr. stated that even though nothing may be going on there he would like the Health Department to reach out to MMA in regards to their permit. Mr. Andrews stated that he would like the MMA

to respond back to the Health Department in regards to their closure and non-renewal of their pool permit. Mr. Uitti agreed to Mr. Andrews statement. Mr. Barlow Jr. asked if there was a motion. Mr. Andrews made a motion for the Health Department to make contact with the MMA to find out why they have not applied for their permit. Mr. Uitti seconded the motion. Roll call vote to approve. Mr. Andrews...yes, Mr. Uitti...yes, Mrs. Mastria...yes, Mr. Barlow Jr....yes. All were in favor and the motion passed unanimously.

**4. Tobacco Violations – *CONTINUED from December 16<sup>th</sup>, 2020*--Discussion and possible vote on penalties for Tobacco Violations pursuant to 105 CMR 665.000:**

- a. **Ship and Store – 165 Cranberry Highway – First Violation (\$1,000 fine)** Mr. Robert Long was present to represent the business. Mr. Long admitted to having 2 types of flavored tobacco. He called the distributor after inspection by Mr. Bob Collett and they confirmed that these products were considered flavored products. Mr. Long asked if he had to have a vaping sign at his establishment even though he does not sell any vaping materials. Ms. Shea replied that according to MA state law as a tobacco establishment he was required to have visible vaping signs. Mr. Long then asked if he could special order flavored boxes of cigars for customers if he did not place them on display in his humidors. Ms. Shea replied that there is no selling any flavored tobacco products under any circumstances within the State of MA. Mr. Long then asked a question in regards to smoking inside of his establishment could he smoke in the building out of business hours. Miss Guarino stated that she believed that the laws applied during business hours. Mr. Barlow Jr. asked for the Board to weigh in on this matter. Mr. Barlow Jr. stated that as long as this happens after hours the Health Department would. Mrs. Mastria stated that since the Health Department does not conduct inspections after hours that as long as the doors were closed there wasn't really an issue. Mr. Uitti agreed with Mrs. Mastria. Mr. Andrews stated that he did not want to weigh in on the subject. Mrs. Mastria moves to defer the question of, once a business is closed for the day is it appropriate for the owner to smoke a tobacco product within the building, to the Barnstable County Tobacco Control Board. Mr. Uitti seconds the motion. Roll call vote to approve motion. Mr. Andrews... yes, Mrs. Mastria... yes, Mr. Uitti...yes, Mr. Barlow... yes. All in favor, motion passes. Mr. Andrews moves to fine the establishment \$1000.00 as it is statutorily required. Mrs. Mastria seconds the motion. Mr. Barlow reminds everyone that this is statutorily required per 105 CMR 665.000. Roll call vote to approve. Mr. Andrews... yes, Mrs. Mastria... yes, Mr. Uitti... yes, Mr. Barlow... yes. Motion passes. Mr. Long asks where the money is going to come from and when does it have to be paid. Mr. Barlow says that people pay as soon as they can. Mr. Long goes on to explain that there is a pandemic and business is down and that a 1000.00 dollar fee from the Town of Bourne is going to make him choose between that and rent. Mr. Barlow explains that the Board is not going to debate this as they are required by law to assess this fine. He further explains that this was actually put off for a month or so, and that Mr. Long knew this fine was coming and had additional time to figure that out.
- b. **Cumberland Farms – 160 Main St – Second Violation (\$2,000 fine)** – Mr. Andrews explains he will have to step off for the rest of the meeting as he has family matters that need to be addressed. Mr. Barlow understands and thanks him for attending. Matt Durand is in attendance for Cumberland Farms, he is a part of EG America, the parent company of Cumberland Farms. Mr. Durand is in charge of retail licensing and retail license compliance. Mr. Barlow explains this is a second violation which is required to be assessed a 2000.00 dollar fine. Miss Guarino further explains however, that with the new fines instilled by 105 CMR 665 local boards of health have the authority to decide if this is a clean slate for their establishments. Meaning this could be considered a first violation under the new fine structure or a continuation of previous violations issued under the old fine structure. Mr. Durand explains that working from home means he does not have access to files as readily as he usually would, so he thanks the health department staff for quick responses and forwarding along documentation, but that he also does not have access to the previous violations so he would like to know what that violation was. Ms. Shea informs him that the previous violation was Sale to a Minor in November of 2017. Mr. Barlow acknowledges

that the first violation was in 2017 and it is now 2021, and they Board has the ability to bring this down to a first violation. He asks if the Board wants to discuss. Mrs. Mastria says she would vote to make this a first violation, and moves to do so. Mr. Uitti seconds the motion. Roll call to approve. Mrs. Mastria... yes, Mr. Uitti...yes, Mr. Barlow... yes. Motion to consider this a first violation with a 1000.00 dollar fine passes. Mrs. Mastria also wants to note that instilling these fines on establishments is statutorily required, the board does choose to do so. Mr. Barlow agrees and says the fine structure and requirements are out of the Board's control.

- c. **Cumberland Farms – 4 MacArthur Blvd – First Violation (\$1,000 fine)** – Mr. Barlow gives Mr. Durand time to speak. Mr. Durand lets the Board know that they have addressed where the issue for both stores originated and have rectified it. He explains it goes back to staffing issues due to COVID-19 at the distribution center, a newer employee unintentionally disabled the blocking feature in the system for flavored products in Massachusetts. Once that was caught, it was put back and the products were shipped back to the warehouse. Meaning this should be an isolated incident. Additional training and signage has been brought about as part of remediation for both these sites. Mr. Durand also is curious because 105 CMR 665.055(B)(1) states that a local board of health “may” enforce the regulation... so there could possibly be some leniency during hard times like today, if the Board wanted to explore that further. Mr. Barlow thanks him and says that the Board stays consistent but will ask the Board what they wish to do. Mrs. Mastria says she would just like further conversation about this language. Miss Guarino explains that while that section does explain that the Board may enforce state code the same way we enforce local regulations, the violations fall under 105 CMR 665.045(A)(1): “for a first violation a fine of 1000.00 dollars *shall* be imposed.” Mrs. Mastria moves to impose a 1000.00 dollar fine for a first violation to Cumberland Farms at 4 MacArthur Blvd. Mr. Uitti seconds. Roll call vote. Mrs. Mastria... yes, Mr. Uitti... yes, Mr. Barlow... yes. Motion passes.

Mrs. Amaral steps in to alert Mr. Barlow that 160 Main Street was not resolved, as the board voted to consider this the first violation but not to assess a fine. Mrs. Mastria moves to go back to agenda item 4b, 160 Main street Cumberland farms. Mrs. Mastria moves to assess a 1000.00 dollar fine for 160 Main Street Cumberland Farms for a first tobacco violation under the new fine structure. Mr. Uitti seconds. Roll call to approve. Mrs. Mastria... yes, Mr. Uitti... yes, Mr. Barlow... yes. Motion passes.

- d. **Ye Old Spirit Shoppe – 41 Meetinghouse Rd – First Violation (\$1,000 fine)** – Mr. Mohammed Shafique is on the meeting for this agenda item. He says he really has nothing more to say on the subject, as they just made a mistake and it has been rectified. He explains while this is a big fine there is really nothing else for him to do, so he understands. Mr. Shafique explains this was not done purposely and wants to do what is right as he is here to service his community. Mr. Barlow thanks him and reminds him that the Board is required to instill these fines because of the law, it is not their choice to do so. There are no further questions or discussions. Mrs. Mastria moves to fine 41 Meetinghouse Rd., Ye Old Spirit Shoppe first tobacco violation at 1000.00 dollar fine according to 105 CMR 665.000. Mr. Uitti seconds the motion. Mr. Shafique asks if he will receive a bill, and Miss Guarino informs him the office will send him a notice that a fine has been assessed. Roll call vote to approve. Mrs. Mastria... yes, Mr. Uitti... yes, Mr. Barlow... yes. Motion passes.

5. **24 North Beach Ave – Raul Lizardi-Rivera P.E. of Cape & Islands Engineering, Inc on behalf of owner Thomas Taborelli- Requesting relief from State and Local Board of Health Title 5 requirements. Variances requested include an 85 foot reduction in the required 150 foot setback from the S.A.S. to a wetland. An 8 foot reduction in the required 10 foot setback from the S.A.S. to the Street line. A 5 foot setback from the S.A.S. to the property line. A 1 foot reduction from the required 5 foot separation from the S.A.S. to groundwater. A 4 foot reduction in the required 10 foot setback from the pump chamber to the foundation and a 3 foot reduction in the required 5 foot unsuitable soil strip out.** Mr. Raul Lizardi-Rivera was present to explain the project to the Board. He explains that the existing septic system was an upgrade from 1989, last year



the title was transferred and a title 5 inspection was conducted that deemed the system in failure. The reasoning behind this is separation to groundwater. The bottom of the existing leaching field is about 1.5 feet above groundwater, groundwater adjustment raised groundwater from elevation 2 to elevation to 2.8. Mr. Lizardi-Rivera is proposing to remove existing leaching field, keep the existing tank, and install a lift station after the existing tank. So flow by gravity from the tank to the pump chamber and raise a new leaching field, a mounded septic system to provide a 4ft separation to the adjusted groundwater. This separation will still require a 1 foot variance because in the encountered soil types it is required to have 5ft separation. The system meets the setbacks to the wetlands based on Title 5 but not in regards to local Board of Health Regulations of 150 feet, so they are requesting a setback of 65ft from the wetland. Mr. Lizardi-Rivera explains where the proposed system is located is as far from the multiple resource areas surrounding the property as they could possibly get it. He further explains this brings it closer to the street line and are asking for a strip out of 2ft instead of 5ft, and put an impermeable membrane at that 2ft offset right on the street line to account for breakout. This also brings the system 5 feet from neighboring lot which is another variance request, but this does allow room for the impermeable membrane and grade down to meet the existing grades from the existing property. Mr. Barlow asks if this has been approved by the Conservation Committee, and Mr. Lizardi-Rivera confirms that it has been at the meeting last week. Mr. Barlow asks if the green cards are in the office, Mrs. Amaral confirms the office does have them. Miss Guarino notes that the mounded system proposed extends beyond the edge of the property line and notes that this is a public road and wonders if there has been specific approvals for this as it would be permanent fill. She also wonders why it wasn't made narrower to eliminate the need to extend the grading onto town property, which is not typically allowable as it would need to be heard at Town Meeting for an easement. Mr. Lizardi-Rivera explains the current proposed grading goes out 6 inches into a lawn area, while it is technically in the street layout it is currently maintained by the homeowner, which he believes to be insignificant. But says he could tighten up the grading to be at the property line, it just makes it that much steeper. Mr. Barlow explains that the Board does not have the authority to grant that type of variance, it would have to go to town meeting for encroachment on town property. The homeowner asks if that is a private road. Mr. Barlow confirms that is a public road, but says the owner may check with the Town Engineer's office. Mr. Barlow asks if it is the Health Agents recommendation they send their plan to Town Meeting? Miss Guarino is unsure if fill would require town meeting, as the grading is minimal and goes into that lawn area, it just may need to be clarified. She feels it should be looked into whether or not you are allowed to add fill for the purpose of a septic system and have something in writing confirming that. She just doesn't quite understand why it couldn't just be a narrower system, maybe by taking out a row of chambers. She also wonders why an IA system was not proposed. Skip agrees, as the Board always looks for IA systems in locations where resource areas are so close, and with Eel pond being an area of critical environmental concern the board would look for some sort of nitrogen removal. Mrs. Mastria feels the board is very consistent in areas like this, and doesn't think it should be any different from any other similar area in regards to IA systems but would defer to Miss Guarino's advice about it. Miss Guarino goes on to explain that about two years ago the Board started hearing any septic permit application that did not meet the local 150ft setback regulation in order to ensure systems with additional environmental protection be installed in those locations. Miss Guarino feels it would be good to see some sort of alternative system in this location if it is feasible over a conventional title 5 system. Mr. Barlow explains the board could do one of two things, the Board could vote on this submission or give the engineer a chance to withdraw and resubmit without prejudice a new plan depicting some sort of IA system. Mr. Lizardi-Rivera would like to hear from the homeowner, Tom, as he is trying to reduce expenditure and trying to not have to remove the Oak tree to the north of the system. Mr. Lizardi-Rivera suggests moving the impermeable membrane from 2ft to 1ft which will bring this to just at the street line and avoid any grading on street side. As for the de-nite system he will have to defer to client as that will be an extensive cost to him. There is no aim to add bedrooms to this home the proposed work is to just improve on the lacking separation to ground water, from 1 foot to 4 feet. The homeowner went on to discuss the financial difficulties associated with a more costly system. Mr. Barlow explains that the Board understands those difficulties but they do not discuss money and the Board has to stay consistent with their decision making. The Board's job is to protect the public health and the environment and this area has been deemed an area of critical concern because of excessive nutrients in the resource area. Mr. Lizardi-Rivera discusses a possible de-nite fast tank replacing existing tank and adjusted grading with everything else staying the same from the proposed plans. Miss Guarino feels the applicant should look at additional alternative systems, as the requirement isn't necessarily a fast system, perhaps something different is more feasible on the site. Mr. Lizardi-Rivera proposes a

continuance rather than withdrawing the application to further discuss with the homeowner. Miss Guarino is comfortable with a continuance for this agenda item. Mrs. Mastria moves to continue 24 North Beach Ave to the next Board of Health meeting. Mr. Uitti seconds the motion. Roll call vote to approve. Mrs. Mastria... yes, Mr. Uitti... yes, Mr. Barlow... yes. Motion passes.

6. **Brief discussion on wastewater regulations for sewer systems.** Mr. Barlow asked for this agenda item to be put on the meeting, he begins by addressing a lot of wastewater discussions going on in the Town of Bourne currently. Miss Guarino discusses current wastewater regulations; a 150ft setback regulation, Title 5 inspection regulation, as well as other preventing illicit discharge as far as a storm water system, these being the most frequently applicable regulations the Board has currently. Miss Guarino addresses the fact that it has been several years since these have been updated, the 150ft setback regulation being updated last in 1982. Mr. Barlow would like to work with Miss Guarino to develop new Wastewater regulations. He discusses that some towns have these while others do not, and would like to focus even on basic regulations related to intentional discharge into coastal habitats, as he finds this is a prevalent issue for the Town. Mr. Barlow asks if the Board would support him working with Miss Guarino to develop some wastewater regulations. On another note Mr. Barlow references Article 84 from 1973 Town Meeting discussion on sewer plants and outfalls into the Canal, at that time this was indefinitely postponed. Meaning if it were to ever be proposed again it would have to go before Town Meeting again, and Mr. Barlow would just like the Board to acknowledge that requirement, as it is very important that it needs to go back to Town Meeting. Mrs. Mastria is in complete agreement, as is Mr. Uitti. Mrs. Mastria made a motion to review and amend the Board of Health's wastewater regulations at a future meeting. Mr. Uitti seconded the motion. Roll call vote to approve. Mastria...yes, Mr. Uitti...yes, Mr. Barlow Jr....yes. All were in favor and the motion passed unanimously.
7. **Approve the Minutes— Approve the minutes from the previous meetings dated November 18<sup>th</sup> and December 16<sup>th</sup>, 2020.** Mrs. Mastria made a motion to continue the approval of the minutes from the meetings dated November 18<sup>th</sup> and December 16<sup>th</sup>, 2020 to the next Board meeting. Mr. Uitti seconded the motion. Roll call vote to approve. Mrs. Mastria...yes, Mr. Uitti...yes, and Mr. Barlow Jr....yes. All were in favor and the motion passed unanimously.
8. **Set tentative date for next meeting and adjourn.** A tentative date for February 10<sup>th</sup>, 2021 was set for the next Board of Health Meeting.

**Mrs. Mastria made a motion to adjourn the meeting. Mr. Uitti seconded the motion. All were in favor and the meeting adjourned at 6:10 pm.**

Taped & Typed by Syreeta Amaral, Administrative Assistant

Stanley Andrews \_\_\_\_\_

Galon Barlow Jr. \_\_\_\_\_

Don Uitti \_\_\_\_\_

Kelly Mastria \_\_\_\_\_