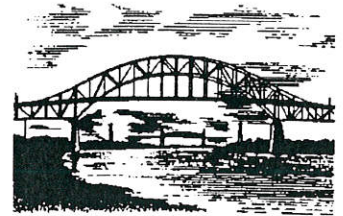


Terri A. Guarino
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**MINUTES
June 13, 2018**

Members in attendance: Kathleen Peterson, Chairperson; Stanley Andrews, Vice Chairperson; Galon Barlow Jr.; Kelly Mastria; and Donald Utti

Support Staff in attendance: Terri Guarino, Health Agent; Zackary Seabury, Health Inspector; and Kayla Davis, Health Inspector

Meeting was called to order at 7:05 pm

Ms. Peterson asked if anyone was recording at this time Michael Rausch indicated that he was recording the meeting. Chair acknowledged that the Agenda was amended due to an emergency situation with a food establishment which arose at the end of the day around 2pm.

- 1. 4 Richmond Road-- MacInnes Consulting on behalf of Josephine Smith—CONTINUED from May 23, 2018--**
Local upgrade approval is requested for reduction in setback distances, and variances from Title 5 of the State Environmental Code and Bourne Board of Health 150' Setback Regulations for installation of an upgraded septic system. Shawn MacInnes, P.E. of MacInnes Consulting was present for this item. The Board reviewed the revised plans which were submitted. The Board requested for the site to be staked at the last meeting which Mr. MacInnes went out to do. Ms. Peterson stated one stake is very close to the street. Mr. MacInnes agreed that it is close to the street but it is on the property. Ms. Peterson asked why Mr. MacInnes is not asking for an alternative system or a tight tank. Mr. MacInnes stated a tight tank is a last resort and the expense may not be practical. He stated this is similar to the other properties on the street. Ms. Peterson asked if Mr. MacInnes made the changes to the plan that he was asked to do the last time he was in front of the Board, to which Ms. MacInnes replied yes, along with them being initialed and signed. Ms. Peterson requested to view those plans. Mr. Barlow asked if this has been through Conservation and Mr. MacInnes responded by saying yes. Ms. Peterson asked Ms. Guarino about her reservations about this project. Ms. Guarino said her recommendation for this site is a tight tank due to so much relief being requested, and the concerns in regards to the proximity to multiple wetlands which may not be indicated on the plans. Ms. Peterson asked what the variances are for the wetlands. Mr. MacInnes stated conservation did not determine those and that they are satisfied, but he could certainly identify those. Mr. Barlow stated the Board is trying to be consistent with the area and Mr. MacInnes stated he could raise the wall if needed. Ms. Peterson asked if Mr. MacInnes has spoken to the owner about an alternative system. Mr. MacInnes stated he has not due to this being the plan in place. Mr. Barlow stated it would be consistent if the Board denied this plan and have Mr. MacInnes come back with an alternative plan due to it being a sensitive area. Mr. MacInnes agreed. Ms. Guarino explained that the most recent project in that area was 1 Richmond Road which installed a tight tank. Ms. Peterson stated to Mr. MacInnes that the board does not like to deny plans but we do need to stay consistent. Her recommendation is to go back to the owner and mention an alternative system and/ or tight tank. Mr. MacInnes said that may be a lot for the home owner to absorb but he will talk to the owners and run the options and costs by them. Mr. Andrews added that it is the home owner's decision and the board cannot make the decision for them. Mr. MacInnes agreed the home owners just want the most for their money. Mr. Barlow said it will not be the first tight tank in town. Mr. MacInnes asked about decreasing the size to a two bedroom system. Ms. Guarino said that would increase setback distances and would possibly meet more criteria regarding the retaining

wall. Ms. Peterson asked Ms. Guarino if that would be suitable and she replied that it is something that should be considered in this situation. Ms. Guarino added that there are a lot of options. Mr. MacInnes said that he will go back to the drawing board to consider those options. **Mr. Barlow made a motion to allow Shawn MacInnes to withdraw his proposal for 4 Richmond Road. Mr. Uitti seconded the motion. All in favor, it was a unanimous vote.**

2. **New Food Establishments—Discussion and possible vote to approve two new food establishment permits in accordance with 105 CMR 590.012. Permits shall be contingent upon pre-operational inspection and other compliance with all laws:**
 - a. **The Berry Blend, 283 Main Street, Buzzards Bay—20 seat food establishment-** Not Present moved to end of agenda.
 - b. **Mahoney's on Main, 59 Main Street, Buzzards Bay—86 seat food establishment—**Mr. Barlow recused himself for this agenda item. Vincent Mahoney and Darlene Mahoney are the owners for this establishment, Darlene was unavailable to attend but Vincent was present for this hearing. Mr. Mahoney is currently ServSafe certified and Mrs. Mahoney's certification is pending. Ms. Peterson stated that this is something new they are doing to reinforce how serious it is to hold a license to operate a food establishment. It is hopeful the owners will not be in for a board meeting again, given that if they are it would indicate they are not listening to the health agents when they come for inspections. A license to operate a food establishment is a privilege, not a right and the board takes that very seriously and have strengthened the rules as of late. If you felt what was asked of you was unreasonable you could write a letter requesting to be seen in front of the board. Ms. Peterson asked if anyone else had anything. Mr. Andrews responded that the office is an asset for you, if you have a question or something that needs to be changed they will work with you to help you run a successful business in town. He encouraged Mr. Mahoney to reach out as needed. **Mr. Andrews made a motion for the office to grant a food permit contingent upon a preoperational inspection. Mr. Uitti seconded the motion. All in favor and the motion passed unanimously.**
3. **20 Bradford Road—Engineering Works, Inc. on behalf of Gerald Atkins—Local upgrade approval is requested for reduction in setback distances, and variances from Title 5 of the State Environmental Code and Bourne Board of Health 150' Setback Regulations for installation of an upgraded septic system.** Mr. Barlow rejoined the meeting. Peter McEntee, P.E. was present for the meeting. Mr. McEntee stated the property is restricted in area for a leaching facility and currently has a cesspool in the backyard. It borders along wetlands and it has been in front of the Conservation Commission and approved. Mr. McEntee listed all the setbacks and variances to the Board. Ms. Guarino stated a significant difference between this proposal and the one discussed earlier is that the requests for relief are specifically stated; a 96 foot variance from the required 150 foot setback of the leaching facility to the wetland resource area; a 4 foot reduction in stripout boundary around the perimeter of the leaching facility pursuant to 310 CMR 15.255(5); Reduction in the recommended separation distance between the polyliner and the soil absorption system from 10 feet to 1 foot; A 4 foot reduction from the required 10 foot setback distance from the septic tank to the front property line; A 5 foot reduction in setback distance from the pump chamber to the front property line; a 3 foot reduction in setback distance from the leaching facility to the front property line; a 4 foot reduction in setback distance from the leaching facility to the side property line; a 14 foot reduction from the 20 foot setback distance from the soil absorption system to the cellar wall; and a 1 foot variance from the required 5 foot separation between high groundwater and the bottom of the soil absorption system for a 4 foot separation. Mr. McEntee added that the property is a rental and the North Sagamore water district sent an email in support of the plans due to the new system upgrading an existing failed cesspool, also it is not in the water resource. Ms. Guarino agreed that it is not within the zone 1 or zone 2 of the public water supply. Mr. McEntee feels this is the most feasible spot he believes they could get. There was no public comment. **Mr. Barlow made a motion to approve the 9 variance requests for 20 Bradford Road for local upgrade approval and construction in fill and a 96 foot setback regulation. Mr. Barlow added that this is a different part of town that does not tie to shellfishing or boating. Mr. Andrews seconded the motion. All in favor and the motion passed unanimously.**

4. **Tobacco Retailer Inspection Violations-- Discussion and possible vote in regard to Tobacco Compliance Checks conducted by the Massachusetts Tobacco Cessation and Prevention Program where violations were found at:**

- a. **Sam's Food Store/Citgo, 261 Main Street, Buzzards Bay—2nd Violation within 18 months** Jawad Nasar was present on behalf of this establishment and indicated he has been working seven days a week and does not know how this could happen. Ms. Peterson said that we do have fine process in place and that the regulations cannot be changed. Since this is the second violation in 18 months, the third will lead to a permit suspension up to 14 days. Ms. Peterson said that the Board hopes not to see Mr. Nasar again for this, we understand it gets busy, but there is a need to be vigilant. This is not a punishment, just checks and balances. Ms. Peterson added to be aware that the county and state inspectors will be coming back. Mr. Nasar replied that yes, he understands. Mr. Rausch asked when this violation took place and Ms. Peterson responded saying that the letter was sent on May 31st, 2018. It does not state the exact date the violation took place. **Mrs. Mastria made a motion to issue a fine for \$300.00. Mr. Andrews seconded the motion. All in favor, it was a unanimous vote to issue fines pursuant to the Board of Health Tobacco Regulations.**
- b. **Bourne Bridge Liquors, 310 Main Street, Buzzards Bay---1st Violation within 18 months** Doug and Pam Beecy, business owners, were present for this item. Chairman Peterson recused herself. The owners submitted a letter to the Board of Health about how they corrected the situation. Mrs. Beecy stated they did let that employee go who did not properly check for identification. Mr. Andrews asked the date when this took place and Mrs. Beecy replied that it was in March. Mrs. Beecy said she is very upset by this, they do not sell to minors and have probably never had a violation in all their 20 years. Ms. Guarino agreed that this is the first and only violation the office has on file. Mr. Andrews asked if they have an advanced ID detection on site and Mrs. Beecy answered by saying yes, that's what is upsetting. Mr. Andrews stated the fine of \$300.00 is mandatory per the regulations. Mrs. Mastria added that no one on the board is happy to do this, but it has to happen to be consistent. Mrs. Beecy stated that there were 43 fake IDs confiscated which they have on the 'wall of shame'. **Mrs. Mastria made a motion to fine Bourne Bridge Liquors \$300 for first offense of the tobacco violation. Mr. Uitti seconded the motion. All in favor and the vote passed unanimously.**
- c. **Seaside Wine and Spirits, 4 Barlows Landing Road, Pocasset—1st violation within 18 months** Paula Cody, Manager, was present for this meeting. Ms. Peterson returned to the Board. Ms. Cody said they have an advanced ID detection unit as well which unfortunately went down for one week due to the system being bought out, which put their systems down until they found a new company. Due to the holiday weekend it took longer to get a new company. Ms. Cody did review the video of her employee accepting the fake ID, the employee did check the ID but appeared to be rushing. This employee admitted to the error and paid the fine herself. Ms. Peterson said there will be more stings so please be aware of it. **Mr. Uitti made a motion to fine Seaside Wine and Spirits \$300 for first offense of the tobacco violation. Mr. Andrews seconded the motion. All in favor, and it was a unanimous vote.**

5. **175 Cranberry Highway, Sagamore—Owners Charles Prete & Sandra Ryan to request variances from State Sanitary Code, 105 CMR 410.000, for use of existing basement apartment with. Discussion and possible vote to approve variances from ceiling height requirements, and natural ventilation and lighting requirements for dwelling units.** Charles Prete and Sandra Ryan present. Mr. Seabury explained that we received a complaint about state sanitary code violations from an occupant. That occupant no longer lives there and Mr. Seabury advised the owners that the unit is not habitable. The room was originally built to be a sitting area with a sewing room out back with a small window. Mr. Seabury informed the owners of the violations and how to bring it up to code since a kitchen and bathroom were both installed which made it a studio apartment. The owners fixed other original violations. Mr. Seabury stated three variances are requested for not meeting seven feet for the ceiling height from the floor, eight percent of light, and four percent of ventilation. They are willing to put a glazed door in to make the lighting better due to being less than half of the requirement. Mr. Seabury stated he required the measurements of this new door prior to approving. Ms. Guarino asked the condition of existing door, Mr. Seabury responded that the door does seal and is in good repair. Ms. Guarino suggested the Board require that

these variances be posted in the unit to make occupants aware the apartment has approved variances from the minimum standards of human habitation, along with the contact information for the owners. Mr. Prete explained that 10 year smoke detectors have been installed. Mr. Seabury stated the building inspector and fire inspectors still need approve. **Mr. Andrews made a motion to approve the variances listed, a variance of two inches of ceiling height to floor, four percent of light with requiring the new door, and 2.4 percent of ventilation pending building and fire inspection. Mr. Barlow seconded the motion. All in favor and it was a unanimous vote.** The apartment will need an inspection prior to renting to verify the new door has been installed and all other requirements are met.

6. **1 Eldridge Avenue Ext.-- Robert Fantozzi Jr., Owner—Noncompliance with Board of Health meeting vote on Dec. 13, 2017 and order dated November 22, 2017 for violation of State Sanitary Code, Chapter II, and Bourne Board of Health Blight Regulations. Discussion and possible vote to pursue any and all statutory remedies.** Ms. Peterson stated today at 4:15 the office received letter regarding this property from Mr. MacMahon. This letter stated Mr. Fantozzi hired a crew of four individuals, has a purchase and sales for an extra facility to house some items currently outside his residence, dumpster on-site to start the work today June 13, 2018, and he attached a picture. The work is to begin today, June 13, 2018 and will be complete by the next meeting date, July 11, 2018 according to this document. Ms. Peterson stated the problem she is having is that he stated he will notify the Board of Health a week before the continuance date that the Board has not agreed to, on July 11th in order to make arrangements to inspect the property. Ms. Peterson stated the problem that we're having was the Health department has already made attempts to inspect the property, and have been thwarted in their attempts to visit the property. Ms. Mastria stated she has no problem exercising whatever it is that we need to be able to do to get into the property and inspect the property on our terms. Ms. Peterson explained the old order has passed, unfortunately Mr. Fantozzi has suffered a terrible accident, many letters and phone calls have been sent to Mr. Fantozzi by members of the Board and the Health department, and this is the first time there has been a substantial response. Ms. Mastria pointed out the document is a purchase and sales agreement indicating it has not happened yet. Ms. Peterson said moving all the stuff to another yard does not cut it. Ms. Guarino handed out a document in regards to inspections, indicating the importance of inspections and that access to this property is limited due to the gate. Ms. Guarino stated it is important to conduct an inspection and it is a significant issue that the office has not been granted access to do an inspection. Ms. Guarino added that it is her recommendation to proceed with any and all administrative procedures or legal remedies to get access to this property, conduct an inspection, and verify that the violations have been corrected. It would be fantastic if this was voluntary, but one dumpster is not going to take care of all the accumulation. Ms. Peterson shared the concern that the Board does not even know what else needs to be done because they cannot access the property. Ms. Mastria requested that one of the Board members attend the inspection. Mr. Barlow suggested to have the fire department assist the office as well. Ms. Guarino stated all public officials will be involved to ensure access. Ms. Peterson stated the fines should start immediately of access to the property. Ms. Peterson stated Mr. Fantozzi was due to be in front of the Board of Health in January but due to the accident had extended that until April, and has had more than enough time to correct. Ms. Peterson said she believes it will take about twenty four hours to legally get access to the property. Ms. Guarino stated it will most likely take a week, and the office will try our best to get legal access as soon as possible. Ms. Peterson questioned whether Town Counsel should get the court warrant to inspect. Ms. Guarino stated that as a start I plan to send a letter to Mr. Fantozzi one last time to schedule an inspection by Monday before we proceed with legal matters. Mr. Seabury stated he will be speaking with Mr. Fantozzi's attorney tomorrow morning about this hearing, and the attorney is also still attempting to gain access into the property. If the attorney can gain access inside he hopes to contact the Health department to invite them in. Mr. Seabury will also drive by to see if the workers are present and approach them during work hours. There was no public comment. **Mrs. Mastria made a motion to pursue with all administrative procedures and legal remedies duly authorized under the regulations and general laws as all other avenues have been exhausted, to gain access for inspection at 1 Eldridge Ave Ext. in reference to 105 CMR 400.000. Mr. Barlow second the motion. All in favor and the motion passed unanimously.**

7. **American Lobster Mart, 2 MacArthur Blvd, Bourne—Owners Todd Reeves & Jason Connolly—Discussion and possible vote on violations of 105 CMR 590.000 for failure to obtain food permit and operating and**

food establishment without a permit. Todd Reeves and Jason Connolly were present as the owners and operators of this food establishment. Mr. Barlow recused himself for the discussion on American Lobster Mart. Ms. Peterson stated that this item was added to the Agenda this evening because she deemed it a possible public health emergency having a food establishment operate without proper permits and inspection. Ms. Guarino added it is consistent with the regulations for you being here tonight in front of the Board. It is in your best interest to respond immediately to the food establishment applications in no more than 30 days prior to opening, and to give substantial notice when requesting pre-operational inspections. Ms. Peterson stated the owners opened another restaurant without a permit and they were fined. Ms. Peterson stated this is not the first year for this business so they know better. Mr. Reeves stated it was an oversight. Ms. Peterson asked if they spoke with Ms. Guarino over thirty days ago and Mr. Reeves responded yes. Mr. Reeves said this will not be an issue again. Ms. Peterson stated this will not be taken lightly in this town. Ms. Peterson asked what day the fine would go back to. Ms. Guarino shared the license application which showed an opening date of April 1, 2018, however, her telephone conversation with the Mr. Connolly stated they opened on Mother's Day, May 13, 2018 for a one-day opening. Mr. Reeves stated they opened just the weekends after that which consist of Thursday through Sunday. Mr. Andrews said that would consist of a total of thirteen days. Ms. Guarino added that according to the Bourne Board of Health Fine Regulations, the fines are up to \$3,300 for 13 days of operating a food establishment without a food permit or inspection. Mr. Andrews agreed that the establishment will be fined \$3,300 but that they do have the right to come back in and ask for a reduction, but they would have to do a formal letter for that. Ms. Guarino wanted to add that there are still outstanding violations that require correction prior to signing off on the permit, but she believes the establishment is aware and the corrections should be able to be remedied within 24hrs. Mrs. Mastria said the establishment could then check with the office on putting a letter together on reduction of fee's, with no guarantee that it will be reduced. Ms. Guarino said typically there is a 21 day timeframe on the violations on non-criminal disposition of fines, wondering when the fines incurred will be due to the town. The next Board meeting is outside the 21 day time frame. Ms. Guarino referenced a payment plan that the Board agreed to with owners of a previous establishment, if the Board would consider something similar. **Mr. Andrews made a motion to issue fines for the 13 days of operation without a food permit of, according to our policy, of \$3,300, I encourage American Lobster Mart to review and file to come back in front of the board to discuss these, and during that time frame the office will be allowed to issue a new permit provided there are no other health violations within the establishment.** This was a miss on an application timeline. Ms. Peterson stated that no one likes to do this, but somewhere along the line this has to stop. It is not up to the office to hold an establishments hand and walk them to the office to sign up for a food permit. If you run a business in this town you know what you are supposed to have. The fine system was put into place for that reason, is that you are well aware of what you need, and by not doing it in time it has created bad press for the establishment and the Board, but we need to be consistent with what we have done with other restaurants. Ms. Peterson suggested that the Board does as Mr. Andrews said, and issue the fine, and at the next meeting either on June 27th or on July 11th the Board will quickly meet and discuss all the ways they can pay the fine. Ms. Peterson feels the fine is fair, since everyone else in town with a restaurant have a license and this establishment does not. **Mr. Uitti seconded the motion. All in favor, and the motion passed unanimously.**

8. **Board procedures-- Update applications and forms for requesting to be heard before Board of Health for variances and waivers. Clarify requirements for septic variances, animal regulation variances, and other requests for relief.** Ms. Peterson reviewed the draft applications prepared by the Health Department and said that she thinks they are very well done. Ms. Guarino stated it has been brought to her attention by the public that it is confusing to file for variances. Whether for a septic system, or an animal regulation variance, it can be overwhelming to people to file their applications. Hopefully these instructional applications will be more user friendly so that anyone can complete them. Ms. Guarino suggested to eliminate percentage of increase worksheet except in situations where there is a raze and rebuild of a dwelling and they are requesting a waiver to use the existing septic system. That would be an applicable situation for that policy to come into play, but otherwise, there is always an issue with either the plans or the actual calculations. If someone were to submit for a waiver to raze and rebuild with no proposed changes to the existing septic system, we could notify them that an additional worksheet would be required. There was no public comment. Ms. Peterson asked if there is a motion on this. **Ms. Mastria made the motion to accept the new procedures for filing variance requests for septic variances,**

local health regulations, and upgrade approvals. Mr. Uitti seconded the motion. All in favor, it was a unanimous vote.

9. Revisit item #2. **New Food Establishments**—Discussion and possible vote to approve two new food establishment permits in accordance with 105 CMR 590.012. Permits shall be contingent upon pre-operational inspection and other compliance with all laws: **The Berry Blend, 283 Main Street, Buzzards Bay—20 seat food establishment** No one present for this establishment. Mr. Barlow recused himself from this agenda item. **Ms. Peterson made a motion to disallow any food application for this establishment until they can present themselves at a Board of Health meeting. Mr. Andrews seconded the motion. All in favor, the motion passes unanimously.** Ms. Guarino stated that there may have been some confusion on whether the owners were required to attend. Ms. Guarino told them to attend via e-mail, while Mr. Seabury spoke to them afterwards and accidentally told them they did not have to attend. Ms. Peterson stated she is the only one able to decide who cannot attend once listed on the agenda.
10. **Approve the Minutes**—Approve the minutes from the previous meetings on May 9th, 2018 and May 23, 2018. The May 9th meeting minutes were not completed for review or approval as it was an extremely long meeting. **Ms. Mastria made the motion to approve the minutes from May 23, 2018. Mr. Uitti Seconded the motion. All in favor, and it was a unanimous vote to approve the minutes from the meeting dated May 23, 2018.**
11. **Set tentative date for next meeting and adjourn.** June 27th, 2018 at 7pm in the lower conference room of the Town Hall.

Mr. Andrews made a motion to adjourn the meeting. Mr. Uitti seconded his motion. All in favor and the meeting adjourned at 8:24 pm.

Taped & Typed by Terri Guarino, Health Agent
Approved with amendments 8/8/2018

Kathleen Peterson

Galen Barlow Jr.

Don Uitti

Kelly Mastria