



**TOWN OF BOURNE
BOARD OF HEALTH
24 Perry Avenue
Buzzards Bay, MA 02532
Phone (508) 759-0615 x1
Fax (508) 759-0679**



Cynthia A. Coffin,
Health Agent

**MINUTES
May 25, 2011**

Members Present: Stanley Andrews, Vice Chairperson; Galon Barlow, Don Uitti and Carol Tinkham. **Members Absent:** Kathleen Peterson

Support Staff: Cynthia Coffin, Health Agent, Carrie Furtek, Health Inspector and Kathy Burgess, Secretary

Call to order: Meeting called to order at 7:00 P.M.

- 1. 62 Old Plymouth Rd-Gail Spencer-Appealing Board's decision of May 11, 2011.** Ms. Furtek stated that Ms. Spencer called the office when she received the letter about the Board's decision to reduce the fines to the bank and that all the repairs had been made. Ms. Spencer does not believe that all the violations have been corrected. She was also concerned that she had not been notified of the meeting. Ms. Furtek stated that the issues Ms. Spencer has now are not part of the original order. Ms. Spencer and her family have been moved to the Quality Inn by the bank while they address the problem of mold and the other items Ms. Spencer is concerned with. Mr. Andrews asked if the original list of items had been corrected. Ms. Spencer stated that she understands what Ms. Furtek is saying but she respectfully disagrees. Ms. Spencer stated that on the original list dated October 29, 2011 there were plumbing issues in the basement that have not been addressed and now there is mold in the basement. The bulkhead and the cellar window are still not watertight and the sump pump is not working properly. They cannot live in the house because of the mold so have been moved to a hotel by the bank. Ms. Furtek stated that the top of the bulkhead opening was fixed. Ms. Spencer stated that she does not agree with that. There was general discussion regarding the leak and the fact that the sump pump is not working and will have to be fixed. Mr. Andrews asked Ms. Furtek if she still stands by the first letter stating everything has been repaired. Ms. Furtek answered yes but does agree that new issues have arisen and they need to be fixed. Ms. Coffin stated that the bank and Ms. Furtek have already discussed having the new items repaired. They are already trying to make the repairs. Ms. Tinkham stated that it is taking a long

time. Ms. Furtek stated that that is because new items keep arising. Ms. Spencer stated that they will start the work on the house next week which will mean that they will have already been out of the house for 8 days before he begins the work. The mold from the cellar has risen to the first floor bathroom so the wallpaper needs to be replaced. Mr. Barlow asked Ms. Furtek if she would go out to the house next Tues or Weds when the contractor is there and review the issues. Ms. Furtek stated that she would. They will also fix the tile that was broken when the door was replaced. Mr. Andrews asked the Board how they felt regarding the appeal of the decision. Mr. Barlow stated that he believed that the appeal should be denied because that decision was based on the information they had then. **Mr. Barlow made a motion to DENY the appeal of the Boards decision made on May 11, 2011. Mr. Uitti seconded the motion. All in favor and the motion is PASSES.**

2. **7 Cape Cod Lane-Randy Walsh-Appealing Board of Health decision issued December 8, 2011-**Ms. Coffin stated that the abutter had not been notified of this meeting. The abutter was originally concerned that there was a cesspool on his property and the Board voted that, as a condition of Mr. Walsh's approval, the cesspool be filled in. It is an old system that was disconnected when the new system was put in and no one is sure where it is located. Ms. Coffin stated that she met with Bousfield about a week ago and, based on their observations, the old cesspool, based on the direction of the pipe, is not in anyone's yard where anybody's house is. It's underneath a paved parking lot which rises at least 8ft up from the grade of Mr. Walsh's house. On the other side it drops down up on a coastal bank that goes down to Pocasset Heights on Circuit Ave. Ms. Coffin stated that in her estimation there is no way to easily get to the cesspool without causing runoff and breaking down the hill which would cause a problem for the parking lot. Ms. Coffin stated that the system was put in in 2001 and there have been no problems or caving and the system itself has to be at least 10 ft in the ground above grade where the parking lot is. Ms. Coffin stated that she is quite sure that the abutter is not going to be in favor of the appeal but she feels that it doesn't make sense to try and dig it up. Mr. Barlow asked why the abutter would have had to be notified. Ms. Coffin stated that it was an appeal of a condition that the abutter requested be done. Mr. Walsh stated that it is an interesting situation because all the properties were together so the cesspool apparently was built on his neighbor's yard. When Mr. Walsh bought the home the cesspool cover was off and thrown in the yard. When he bought the house he had to put a septic in and never knew where the cesspool was. Mr. Walsh stated that he thought it was where the cover was in the yard but the cesspool has been buried under the parking lot and now there is no way to get to it. Mr. Walsh showed the Board a drawing of where the parking lot is and the cesspool is. He also showed the property lines. Mr. Barlow asked if Ms. Coffin had been out to the site. Ms. Coffin stated that she had been out there and they cannot find where the cesspool is located. Ms. Coffin stated that it is probably 6 or 7 ft. in the bank but is not under the lid. Mr. Walsh stated that he cannot get his building permit until this is resolved and he has been waiting for three months. Mr. Walsh stated that his

neighbor, Mr. Cruise, is the only one who knows where the cesspool is and he built his parking lot over it. Ms. Coffin stated that she believes that the Board's condition to find it and fill it in will cause more damage. There is 8 ft of fill on top of it and trying to get to it will disturb the abutter's property more and will also cause a problem with the secondary bank that is there. Mr. Andrews asked if it was more of a detriment to try and locate it. Ms. Coffin answered yes. **Mr. Barlow made a motion to rescind a decision issued on December 8th 2010 regarding the filling of the septic cesspool associated with the project at 7 Cape Cod Lane. There is no evidence of where the cesspool is and it would cause more environmental damage to try and find it. Ms. Tinkham seconded the motion. All in favor and the motion PASSES.**

3. **45 Hope Ave-Zachary Basinski for Kenneth Jeffries-Requesting extension of variance granted on May 26, 2010-Ms. Coffin stated that the original variance was granted on May 26, 2010 and will expire. They have not done any work or pulled any building permits but they are hoping to do the work this fall. Ms. Coffin is recommending a six month extension. Ms. Tinkham made a motion to APPROVE a six month variance extension at 45 Hope Ave until November 26, 2011. Mr. Utti seconded the motion. All in favor and the motion PASSES.**

4. **Wind Turbine Regulations-Board of Health discussion on draft-Mr. Andrews stated that he wanted to apologize to the Board. Mr. Andrews stated that this is a major undertaking which was given to him at the last meeting. He has had a virus on his computer and was not able to complete the draft. Mr. Andrews has a second draft which he would like the Board to look over and provide some input so he can continue on the draft regulations for the next meeting. Mr. Andrews read from the draft: *The Bourne Board of Health voted at its regular meeting June 8, 2011 after receiving public testimony that there are public risks associated with wind energy conversion devices (WECD). The Board has found that there are health effects associated with noise, shadow flicker, fluids and catastrophic failures of these systems. Pursuant to Chapter 111 Section 31 122-143 Mass General Laws the Board of Health has determined that reasonable regulations be adopted for the protection of the public health and safety of the residents of Bourne.* Ms. Coffin stated that Chapter 111 Section 31 is what gives the Board of Health the right to adopt regulations. Chapter 111 Section 122 is the nuisance section which gives the BOH the right to investigate a nuisance. Mr. Andrews stated that that was in the original draft that has gone off to counsel but he has not received a reply yet. Ms. Coffin stated that she believes it should say *Pursuant to Chapter 111 Section 31 the BOH hereby adopts the following regulation.* Ms. Coffin stated that that is the statute that gives them the right to adopt. Ms. Coffin stated that she would look into the wording for that. Mr. Andrews stated that she could address that right to Brian Wall to get his feedback. *Section 1 Definitions-WECD-* Mr. Andrews stated that he did not have a definition from the Board. There is a definition from the planning board regulations that they could use. The planning board uses WECS-Wind energy conversion system. Mr. Barlow stated**

their definition is: all equipment, machinery and structures utilized in the connection and conversion of wind to other forms of energy. Mr. Andrews asked the other members if they thought that was an acceptable definition. The Board members were in agreement. Ms. Coffin stated that she preferred the word system to devices. *Shadow Flicker-the effect of the sun being blocked by an object that is in motion casting a shadow that it intermittent.* Mr. Barlow stated that the word consistent should also be added. Mr. Barlow asked if Mr. Andrews had given any consideration to adopting the regulations right from the planning board turbine regs. Mr. Andrews stated that that was not the direction they were going and they have walked through this with Town Counsel and developed a format but they can change things if they find another format to be better. *Section 2-Permit-The Bourne Board of Health will require person/persons or businesses who want to construct a WECS to obtain a permit from the BOH prior to construction. All other town permits must be obtained prior to a hearing before the Board of Health. A vote of the Board is required for the permit.* Ms. Coffin stated that she is concerned that the last thing they have to do is to get a permit from the BOH. Ms. Coffin stated that she does not want them to have to go through a lot of applications and then be denied by the BOH. Mr. Andrews stated that he wants to write a set of regulations that are easy to understand. Mr. Andrews stated that they will know in advance what they need to do so there shouldn't be a surprise. *Section 3-Fees-*Ms. Coffin stated that a septic permit is \$100.00 but she does not know how much review there will have to be done with a WECS. The fee is associated with how much time and review from the BOH. Ms. Coffin suggested waiting to see what will be required in the regs before setting the fee. *The applicant will provide all technical fees that are determined by the BOH at the time of the application which will include, but not be limited to, reasonable fees for the employment of outside consultants chosen by the Board of Health.* Diana Barth asked if the fee would be determined at the time of the application. Mr. Andrews answered yes and he has been looking for something out there that would tell him what type of formula to use that could be applied as guidance to a fee. Mr. Barlow suggested the wording *responsible for all fees before the issuance of the permit.* The applicant would be responsible for all fees before the issuance of the permit. Mr. Barlow stated that questions could come up from residents that may need a consultant to come in and answer. Mr. Andrews stated that the Board Members are not experts in wind energy and an engineer may have to come in as a third party which the applicant would pay for. *Section 4-Noise-prior to construction part of the permitting process will be an ambient noise study to determine the base line for noise in mitigation.* Mr. Barlow stated that they may want to read the planning board article that went in front of Town Meeting and try to incorporate some of that. Mr. Andrews stated that he wants as much input from the Board members as possible because the only time they can discuss it is at the meetings. Mr. Barlow stated that he believes Mr. Andrews has done a very good job on the draft and they will be changing and adding to it. He believes the Board should look at the wind turbine law that was adopted at Town meeting, as amended, and get a copy from the Town Clerk and then come back and discuss it again. Mr. Andrews agreed. *Section 5-Threshold-Days-The noise level shall not*

exceed ____value above ambient and a cap value of ____measured in db and what scale to be used. Nights-A noise level shall not exceed ____value above ambient and a cap value of ____measured in db and what scale. Ms. Coffin stated that the DEP is currently trying to rewrite the noise sections of the State regs which right now is 10 db above background. Ms. Coffin asked if Mr. Andrews has literature he is using to determine this. Mr. Andrews stated that they have received different values in their hearings to be used from 0,3,6,10 and at one of the last hearings they heard what the difference of how many db is a doubling or quadrupling. From the information given each Board member will have to go through it and get their own interpretation of what the information meant to them. *Section 6-Modulation-Noise from the WECS shall not modulate more than ____db at a frequency between ____hertz and ____hertz. Shadow flicker-Shadow flicker shall not extend beyond the lot lines of the property that it is located on. A variance can be obtained to allow shadow flicker to extend beyond the lot lines as stipulated in the section on variance.* Mr. Barlow stated that he did not know if that was reasonable. Mr. Uitti stated that it would be a problem if there was a small lot. Mr. Andrews stated that you have to weigh out the information that was given at the hearings as to the health effects of shadow flicker and from there make your own determination. Mr. Barlow stated that he is not disagreeing with him but he is not sure if a court would determine it reasonable and they may want Town Counsel's advice on that. Mr. Andrews stated that the meeting is for deliberation and to take all the Board's input on the sections. *Catastrophic failure-*Mr. Andrews stated that he would like the Board to come up with a definition and what they are looking for as far as the health effects of catastrophic failure. Ms. Coffin stated that she thought it was the requirement that they develop a plan to address certain futures of catastrophic failure. Mr. Andrews stated that they had talked about FMEA done as part of the process so that they understood what the failure mechanisms were and what mitigation was being done in the design and what items couldn't be mitigated under a Failure Modes Effects Analysis. Mr. Andrews stated that you go through and figure out what the failure is and what the mode that caused it was and can it be engineered out and if not what would you do to mitigate that. *Abandonment-WECS is considered abandoned when it is not operated for ____days. At that time all fluids and harmful products shall be removed from the property within 30 days.* Mr. Barlow stated that they will have to be specific in determining what they feel is harmful. Ms. Coffin stated that by saying not operated is that saying not connected to a power source. There are a lot of reasons why it could not be operating for 30 days. Mr. Andrews stated that there could be some information to use in the bylaw. Ms. Coffin asked why they were automatically writing this regulation to mirror the planning board reg. Mr. Andrews stated that he does not believe they are and only wants the Board to review their regs to see if there might be some useful information. Mr. Barlow stated that they are looking to be consistent. *Variances-A variance can be obtained by a vote of the full Board with the following stipulations or a Board policy.* Mr. Andrews stated that if an applicant requested an extension of flicker onto an abutter's property they could do that with the abutter signing off but the Board would require a recording at the registry of

deeds. Mr. Barlow stated that he would add to that *with a majority vote of the full Board* only because if that is not in there then two people becomes a minority rule and that is not a good thing. Ms. Coffin stated that there are not many turbines that could operate without flicker going off the property. Mr. Andrews stated that the testimony they have received that some systems may cause 5-30 minutes of flicker per year but they do have software that can blank that period of time out. Ms. Coffin suggested that it might make sense under flicker to put a minimum flicker hours of operation. Mr. Barlow stated that the reason that they got involved in that is there were statements made that flicker could trigger epileptic issues. *Emergency Access-The Board of Health shall have a Knox Box available at the gate with an emergency shutdown switch to deactivate the WECS in case of an emergency. This device shall also be available for other safety personnel as required.* Mr. Andrews stated that he would like the rest of the Board to work on all the sections before the next meeting and to elaborate on each item. Mr. Andrews stated that he would like the June 1 special meeting to be converted to a workshop where they can sit with a white board and work through each of the sections. Ms. Coffin stated that she has paid for legal notices to be put in the paper for that date as a public hearing. Mr. Andrews stated that this process is a lot more involved and realizes that there is no way to notify the public at this point that there will not be a public hearing on that date. Mr. Barlow stated that he received an email that by an overwhelming margin of 132-6 the House of Representatives of the State of Conn today approved to declare a moratorium on wind turbine development until specific detailed regulations for such installations can be developed. Mr. Barlow asked if they might want to consider any moratoriums on commercial turbines. Mr. Andrews stated that that discussion may be out of line as they have to stick to the items on the agenda. Mr. Barlow stated that this is a discussion on wind turbines. Mr. Andrews stated that he would be willing to look at a moratorium as a future agenda item. There was general discussion regarding the open meeting law and what could be discussed. **Mr. Barlow made a motion that the June 1, 2011 public hearing meeting be changed to a workshop on wind turbine regulations to further their discussion and bring in more thoughts. Mr. Uitti seconded the motion. All in favor and the motion PASSES.**

5. **Approval of Minutes dated April 27, 2011 & May 11, 2011-Mr. Barlow made a motion to APPROVE the minutes of April 27, 2011. Ms. Tinkham seconded the motion. Don Uitti abstained from the vote. All others in favor and the motion passes. Ms. Tinkham made a motion to APPROVE the minutes dated May 11, 2011. Mr. Uitti seconded the motion. Mr. Barlow abstained from the vote. All others in favor and the motion PASSES.**
6. **New Business-Mr. Andrews stated that this item is out of order according to the open meeting law. Ms. Coffin asked how she was going to be able to give them updates. Mr. Andrews stated that there is a ruling that has come down from Town Counsel. Ms. Coffin stated that she read the ruling and is asking him how she will be able to address the Board when issues come up. Mr. Andrews stated that they**

will have to identify a policy that is going to allow amended agendas and they will have to contact Town Counsel and ask him for his opinion as to how they can deal with items that are urgent for public health. Mr. Barlow stated that he would like to make a motion but he cannot do that because he cannot change or establish a policy right now because it is not on the agenda. Mr. Barlow stated that out of respect for Town Counsel he believes that until everyone has been notified that the policy has changed they should listen to what Ms. Coffin has to say. Mr. Andrews stated that he will have to stop them if they are out of order or he will be in violation of the State Ethics Board. Mr. Andrews stated that he signed for a copy of the ruling from Town Counsel today at the Town Clerk's office. Mr. Gately asked how far in advance they could amend an agenda. Mr. Andrews stated that it had to be posted 48 hours before the meeting which would be a Monday afternoon by 4:30. Mr. Gately stated that that was a long time to let a health related issue languish. Mr. Andrews agreed and stated that they would have to get some clarification on that from Town Counsel. Ms. Coffin asked what if she just wanted to tell the Board something but not ask them to discuss it. Mr. Barlow stated that he felt that she should just go ahead and tell them. Mr. Andrews stated that he would have to tell Ms. Coffin she was out of order because it is not on the agenda. Mr. Mulvey stated that Town Counsel has issued a memo on this subject in some detail that is being published and it will be given to each committee. Mr. Andrews stated that he has already received an electronic copy and he was given a hard copy today by the Town Clerk's office and that is what he is basing the running of this meeting tonight on. Mr. Andrews stated that he does have a concern about there being a public health issue and Ms. Coffin not being able to update the Board about that. **Mr. Barlow made a motion to ADJOURN. Ms. Tinkham seconded the motion. All in favor and the meeting was adjourned at 8:10 P.M.**

Taped and Typed by Kathy Burgess for the Bourne Board of Health

Respectfully submitted by the Bourne Board of Health

Kathleen Peterson_____

Stanley Andrews_____

Galon Barlow_____

Don Utti_____

Carol Tinkham_____

cc Board of Selectmen/Town Clerk