



**TOWN OF BOURNE  
BOARD OF HEALTH  
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Cynthia A. Coffin,  
Health Agent

**MINUTES  
March 2, 2011**

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

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

**Call to order:** Special Meeting called to order at 6:30 P.M.

**Meeting with Brian Wall, Town Counsel, regarding site assignment public hearing-**  
Mr. Barlow stated that they have had a lot of submissions of evidence already and asked if they had to ask questions regarding the material they are already aware of. Mr. Wall stated that you can do either or but doesn't think there is any need to rehash something just for purposes of the record. Mr. Hanscom stated that he can present again in paper form and will address any questions but it is all information that they have previously submitted. Mr. Wall stated that for purposes of clarity, for the record, they could incorporate by reference the fact that there have been prior submissions which could become part of the record. Ms. Peterson stated that in a previous site assignment they had to give the hearing officer the questions and he decided how he would take those questions. Attorney George Hardiman, hearing officer, stated that he believes the rules allow the hearing officer to conduct the hearing as informally as appropriate and the hearing officer can require that the questions go through him or through the chairperson. Mr. Hardiman stated that his thoughts were to see how the Board wanted to handle it and, being a small group, the questions being directly posed to the witness might be easier and help to move things along more quickly. Ms. Peterson stated that she would like to let Mr. Hanscom present fully and then let the Board ask any questions that they may have. Mr. Wall stated that he and Mr. Hardiman spoke briefly and feel that it would be appropriate to have the applicant present and then turn it over to the Board for any questions that are relevant to the proceeding and at that point it can be opened up to any public commentary. The regulations that are applicable to this do actually contemplate the ability to cross examine so it is possible that the Board can ask the witness directly any questions through proper channels. Mr. Wall stated that he is concerned about

keeping control of the hearing if the public comes out in a large number and asks questions through the chair. Mr. Hardiman stated that he believes the litigator cross examine, as stated in the rules, is limited to the Board and the applicant. Ms. Peterson asked what the rest of the process was after this evening. Mr. Wall stated that the hearing officer has to open the hearing. It is like having an evidentiary hearing inside of a public hearing. Mr. Wall stated that the Board will open the public hearing and then Mr. Hardiman will open tonight and at the conclusion of the proceeding he ends the process but has to make a determination as to how long the record remains open for the submission of written evidence afterward. At some point after that happens the hearing becomes closed. Mr. Wall stated that under the regulations as they now read, bearing in mind the statute has changed, they are dealing with regulations that are slightly out of sync with the statute but the regulations provide that the Board has to issue a written decision within 45 days of the initial hearing date. Ms. Peterson asked if the decision would be reviewed by Mr. Wall or Mr. Hardiman. Mr. Wall stated that Mr. Hardiman had to remain neutral and that Mr. Wall was there to aid and represent the Board. Mr. Wall stated that what he envisioned was a subsequent public meeting where the Board meets in accordance with the public meeting law in open but not in a hearing setting to deliberate comment on where they will go with it and how they will write this decision and he will be happy to help the Board with the drafting. Mr. Wall stated that he believes they will have to make factual findings on the criteria and then ultimately conclusions to grant or deny the permit. The site assignment and the statute and regulations do provide that you can condition the permit. Mr. Wall stated that it is almost like a permit decision you make on a Title 5 or a restaurant license and he is sure after the hearing the Board will have opinions. They have to comply with the open meeting law so they can't deliberate outside of an open session but are certainly free to think about it. Mr. Wall stated that they can have a public meeting in accordance with the open meeting law to have questions, answers, deliberations, comment and give some direction as to which way the Board is going because he does not want to be presumptuous about this. Mr. Wall stated that the most expedient way to do this would be to assign a particular member of the Board to take the lead on drafting a decision and Mr. Wall would work in concert with that person to write it and then the Board would have to approve the decision and vote on it. Mr. Andrews stated that they would open the hearing today and Mr. Hardiman would set forth a deadline for submittals to be put into the record and will tell the Board how long submittals can come through. The decision has to be made in 45 days which puts them to April 16<sup>th</sup>. In the meantime it sounds like there will be one meeting where they deliberate as a Board and then one member working with Mr. Wall to write the decision then one more meeting to vote on the decision to confirm it. Ms. Peterson stated that that would work because they have March 23 and April 13 to make the final vote. Mr. Wall stated that that would be his suggestion and if the calendar permits they should leave room for another meeting if necessary in case, after writing the draft, there are changes of heart or comments and it can't be voted on at that meeting they have to leave themselves room for one more meeting. Ms. Peterson stated that that gives them almost three weeks to draft the regulations and then on the 23<sup>rd</sup> they could be put forth as a discussion and possible vote. There was general discussion regarding the future meeting dates. Mr. Hanscom stated that there has already been a 21 day public comment period and neither he nor Ms. Coffin has received any comments. Mr. Hanscom stated that they

are also consulted on the conditions of approval that are issued by the Board of Health and interact directly with their technical consultant or the hearing officer. Mr. Barlow asked what a reasonable time frame was for waiting to start their decision. Mr. Hanscom stated that it is usually two weeks. Mr. Wall stated that he does not believe it is advisable for the Board to deliberate without all the evidence. Something could come in on the 16<sup>th</sup> and if they have already deliberated and don't take into account that piece of evidence it could be arbitrary or capricious. Mr. Wall stated that if the Board deliberates on March 23<sup>rd</sup> 2011 and chooses a decision officer to work with him on March 23<sup>rd</sup> the Board could reach some sort of consensus as to deny, grant or grant with conditions and that would give him a few days to work on drafting a decision. Mr. Wall stated that he believes the open meeting law allows it to be sent to them all individually ahead of time and that way they could come back on March 30<sup>th</sup> and have comments on the draft. Ms. Coffin asked if there weren't any comments on the 30<sup>th</sup> could the Board vote at that meeting. Mr. Wall answered yes as long as it was covered on the agenda. Ms. Peterson asked that if everything goes okay and there is not a lot of public comment could it be put on the agenda for the 9<sup>th</sup>. Mr. Wall stated that the number one instruction that a jury gets when they come into court is to not make up your mind until you hear all of the evidence. Mr. Wall stated that you wouldn't want to start commenting on it and have the applicant file an appeal saying the Board wasn't impartial. Mr. Wall stated that you really have to delay your deliberations until all of the evidence is in and a two week period should be perfectly fine. Ms. Peterson called a five minute recess before beginning the public hearing.

**Call to order 7:00 P.M.- Public hearing regarding site assignment for Sagamore Truck & Rail-** Mr. Hardiman stated, as the appointed hearing officer, that he calls this hearing to order. Mr. Hardiman stated that the petitioner will present their case and immediately following the presentation of any witnesses the meeting will be open to questions from the Board. The Board will be allowed questions directly of the witness. If there are any other witnesses following the petitioners presentation they will be open to questions from either party. If the public cares to make comments they can make those comments following the presentation of the evidence. At the end of the presentation of the evidence and the comments from the public they will set the date for the deadline of the submission for any further written documents and the hearing will be closed. Mr. Hardiman stated that the hearing would be conducted consistently with 310 CMR 16. In that regard the hearing officer is required to submit any regulations that may be relevant to the procedures of decision. Mr. Hardiman stated that he would ask that the Board accept into the record copies of Mass General Law Chapter 111A, Section 150A, Mass General Law 111, Section 150 ½ and 310 CMR 16. The documents were stamped in for the record. Mr. Hardiman stated that this is the hearing for the site assignment request for Sagamore Truck & Rail and unless anyone objects would ask the petitioner to begin their presentation. Mr. Hardiman stated that the rules require all the witnesses to be sworn in and he would be happy to do that. Mr. Hanscom was sworn in. Mr. Hanscom, Beta Group, is representing Sagamore Truck & Rail. Carol Gallo, president of Sagamore Truck & Rail, and her husband Lou Gallo are present at the meeting tonight. Mr. Hanscom asked since they have made several submittals and there have been several public meetings on the project already can he make reference to the documents that have already been submitted for consideration on this. Mr. Hardiman answered yes. Mr.

Hanscom stated that he would like all the prior documents that have been submitted to the Board of Health with regard to this site assignment be included in the record. Mr. Hanscom stated that the transfer station has been in operation for the past 15 years and has received fly ash and bottom ash from the Mirant Canal plant with which they have loaded the material onto rail cars for the recovery of vanadium. During that period of time Mirant Canal burned fuel oil that was high in vanadium content and there were large volumes of oil and large volumes of ash that was generated during that time which made it economically viable, due to concentration of vanadium in the ash, for recovery. Over the last few years Mirant Canal had converted their boilers to gas fire so the volume of the ash that was generated was severely reduced to the point that it became economically not feasible to ship by rail which is why they are here looking for a site assignment to deal with that smaller volume. The lower concentration of vanadium has a solid waste as opposed to a recoverable heavy metal. Mr. Hanscom stated that that would enable the transfer station to operate with trucks as opposed to rail or by rail and they would like the flexibility to ship off by rail or truck from the transfer facility so the operation is almost identical to what has happened over the past 15 years in that all of the transfer of material would happen within the building. Mr. Hanscom stated that, to the best of his knowledge, there have not been any nuisance conditions that have been created during that time or any public complaints on the handling of the ash during that time. Mr. Hanscom stated that this is for procedure and they need to have a site assignment under the solid waste regulations to operate a transfer station for solid waste. It has become solid waste rather than a reclaimed material. Mr. Hanscom handed the timeline to the Board members. Mr. Hanscom stated that they submitted to the DEP in May of 2010. The change in the regulations shifted the responsibility for site suitability review to the local boards of health. The application has been forwarded to the Board of Health and is now their responsibility to act on it. The timeline was put back on track at the Board of Health meeting on October 7, 2011. The public notifications were made in the paper and complied with the regulations for public notification of the meeting. They provided it to the MDPH for their review as well as DEP but DEP is ignoring it. Mr. Hanscom stated that the BOH has involved an independent reviewer of their technical submittal of the application and have responded to comments. Tonight is the first date of the public hearing and they have 45 days to issue a decision. They are looking for a decision to deny or accept the application with or without conditions by April 16<sup>th</sup>. Mr. Hanscom stated that as part of their application DEP provides a site suitability criteria checklist in their review. Mr. Hanscom stated that the only criteria, in their opinion, that has not been met is the 100 ft setback from the property lines. Mr. Hanscom believes there are 4 properties involved and three of the four properties have provided letters of support for the project. The 4<sup>th</sup> party is the Army Corps of Engineers and they have not had a response from them. Mr. Hanscom showed the abutters locations on the map. Mr. Hanscom stated that there is a provision in the regulations that a waiver of the 100 property line setback can be granted by the commissioner of the DEP and as of this moment that responsibility still resides with the DEP commissioner according to Dave Ellis. Mr. Hanscom stated that they would be seeking approval to the DEP commissioner's office if this were to be granted by the BOH. Mr. Hanscom stated that he has made a few minor modifications to the document provided by Sitec, the technical reviewer for the Board of Health. Mr. Hanscom stated that the first modification is on page 3 which stated that there was some

concern with groundwater elevations and Mr. Hanscom had given conservative numbers before but they are actually much greater in depth. The groundwater below the solid waste handling floor and below the rail siding itself are on the order of 23 and 15' below grade to the groundwater which easily meets the criteria. Mr. Hanscom stated that on the last page of the documents he put a note on the bottom regarding the Board's concern that a panic bar be provided for safety for any personnel inside the facility so that a rapid means of exit in an emergency be available. Mr. Hanscom stated that they are agreeing to that condition and will, as part of the development of the transfer station, provide for panic door hardware. Mr. Hanscom stated that he would like to show the diagram of the lay out plan that was part of the original application to the Board. Mr. Hanscom pointed out the existing buildings and stated that there are no new proposed buildings but there is an area that is proposed to be paved because they are going to be looking for truck access to the back of the facility so they can load out the ash into trucks and be able to drive back out. Mr. Hanscom pointed out the egress point by the Citgo Station to get directly into the transfer station on the diagram. There is also a secondary access through the Gallo Construction yard. Mr. Hanscom stated that there was also some concern about traffic. Mr. Hanscom stated that they are talking about a maximum amount of vehicle trips per day at any point of six so they are looking at an almost indiscernible impact on traffic. However, during the summer it can be a very busy traffic area but from a practical standpoint the truck drivers will not want to be sitting in traffic so they would schedule the trips during off hours so they wouldn't be in peak traffic at the time they would be handling the ash. Ms. Coffin stated that Mr. Hanscom had mentioned paving the road and asked if there would be a filing with conservation. Mr. Hanscom stated that that would be a question for the conservation commission whether or not the Rivers Protection Act would apply to the canal. Ms. Coffin stated that that might have to be included as a condition. Mr. Hanscom stated that it was outside the 100' buffer and is probably just within the 200' River Protection Act but he does not believe that the canal is considered a river. Ms. Coffin suggested that Mr. Hanscom contact the Conservation Agent, Brendon Mullaney. Mr. Hanscom agreed. Ms. Peterson stated that she has a problem with DEP not issuing their decision and does not know if a letter from the Board might get them to issue that before April 13<sup>th</sup>. Ms. Coffin stated that she had sent them an email but has not heard anything back from them. Mr. Wall asked if Ms. Peterson was referring to the requirement that the DEP are the only ones with the authority to waive the 100' buffer. Ms. Peterson answered yes. Mr. Wall stated that the Board is in somewhat of a bind with regard of delaying until the DEP responds because the applicant has a set time frame. Mr. Wall stated that he believes that it could be addressed hypothetically, if the Board is going to grant the site assignment, but the waiver is required in order for it to be suitable. Mr. Wall stated that they could draft a condition that would condition the approval upon obtaining the necessary waiver and providing the Board with evidence that it was properly obtained. The site assignment would not become effective until that was obtained. Mr. Andrews stated that this process was started last spring and one of the things that was brought up was an operational procedure document that was going to be updated and submitted to the Board. Mr. Andrews stated that they would like copies of that document sent in because that will tell them the whole process and how things are going through. Mr. Hanscom stated that procedurally it will be very similar except that instead of dumping the ash and loading it into rail cars on the floor it will be lifted up into

trucks within the facility or it could be that trucks will be backing down where the rail cars are currently being loaded and they could actually push off of the operating floor into the trucks below. Mr. Hanscom stated that they would be preparing and submitting an updated operation and maintenance plan. Mr. Hanscom stated that he should be able to get that manual to the Board before their meeting on March 23, 2011. Mr. Hardiman stated that they would need to get the manual before the date that the records close. Mr. Hanscom stated that whatever date is chosen as the date for the records to close they will accommodate. Mr. Andrews stated that the ash comes through in a wet state and asked what protection they had on the water supply in the building. Mr. Gallo was sworn in by Mr. Hardiman. Mr. Gallo stated that there was just a garden hose set up in there now. The ash will be tipped into the tipping car that is cement lined but it does come in wet and would have to be there for quite a while for it to be thoroughly dry. Mr. Gallo stated that it would be pretty simple to put the backflow valve on. Mr. Andrews asked if the building had been secured and was tight to the weather. Mrs. Gallo was sworn in by Mr. Hardiman. Mrs. Gallo stated that the roof has been repaired. Ms. Peterson asked if they had in the manual their emergency procedures written out should there be a problem. Mr. & Mrs. Gallo both answered yes. Mr. Gallo stated that the handbook is very thorough and the only procedure that will change is the loading of the truck. Ms. Peterson stated that she would like to see the emergency procedure so that it is in the office and on the record should anything happen. Mr. Barlow stated that he feels that this facility has been operating under the DEP guidelines for the past 15 years and anything fundamental would have been addressed a long time ago by the DEP and he would not second guess them. Mr. Uitti agreed. Mr. Wall asked if the access through the Citgo property was legal access. Mr. Hanscom stated that he uses that as an identifier but it's actually on the property owned by Sagamore Truck & Rail adjacent to the Citgo station. Mr. Wall asked if the applicant had two means of access. Mr. Hanscom answered yes. Mrs. Gallo stated that the Citgo station is owned by Mr. Gallo's sisters. Mr. Wall asked if they anticipated any problem with the waiver from the DEP and asked about the recreational bike path that the Army Corps has on its property regarding pollution. Mr. Hanscom stated that this has been a 21E site and there was a written release at the Citgo Station but there has been a response action outcome issued so any release of gasoline underground has been addressed and there are no other contaminated sites that they are aware of. Mr. Wall stated that he was referring to the public using the recreational path for walking and biking. Mr. Wall asked that since the ash was wet is there any air pollution that would bother the public on the recreation path nearby. Mr. Hanscom stated that to the best of his knowledge there have never been any complaints or any overt signs of airborne contamination that has caused any nuisance conditions. Mr. Gallo stated that they have moved more than 60,000 tons out of there that has gone out of state and will continue to go out of state the way it looks now. Mr. Gallo stated that the woods from the back of his building to the canal are very thick and you cannot even see the people walking there. Mr. Hardiman stated that when Mr. Hanscom stated that there were no complaints or overt signs of any airborne particulate and asked if there has ever been any signs that there has been a problem with airborne particulate. Mr. Hanscom stated that, to the best of his knowledge, no there has not been. Ms. Peterson asked if the Gallo's owned the entrance to the left of the gas station. Mr. Gallo answered yes they did own it. Mrs. Gallo stated that the Corp of Engineers has a right of way but they use the Gallo's land to enter

and exit their gate. Mr. Gallo stated that in the lower yard they have a scale and they have to weigh everything for DEP so they would enter the lower down where the landscape yard is and weigh the truck and then proceed along the rail up to the building. The trucks are loaded coming back through the rear entrance by the other side of the bridge. Mr. Hanscom asked Mr. Gallo if the incoming trucks loaded from Mirant would be weighed. Mr. Gallo answered yes they are weighed. Mr. Barlow asked if they had a copy of the original DEP guidelines set for this site. Mr. Hanscom stated that he could provide it to the Board. Mr. Hanscom stated that it was a 1994 letter from DEP. Ms. Coffin asked if it was part of their application. Mr. Barlow stated that he believes that that document would be helpful to the Board. Mr. Wall asked if Mr. Barlow was referring to the prior site assignment. Mr. Barlow stated that the prior site assignment was directly for rail and now they want to add trucking so they would like to see what the DEP guidelines were set for rail and for the site. Mr. Hanscom stated that it was not site assigned previously but there was an approval letter that was provided by DEP which he believes is part of their application but if not he will get a copy to the Board of Health office. Mr. Hanscom looked at the application but did not see the letter and stated that he would get a copy to Ms. Coffin. Mr. Barlow stated that he understands that there was not a site assignment by DEP but believes that they had set some guidelines for handling which may or may not help the Board in making a decision. Mr. Hanscom stated that it was a determination of exemption because the vanadium was being reclaimed and there is an exemption for recovered materials like that. Ms. Peterson asked if there was anyone in the audience for Sagamore Truck & Rail. There was not. Mr. Hardiman asked if there were any more questions for the applicant or if the applicant had anything else to present. Mr. Hardiman stated that he wanted to make sure that everyone agreed that there would be several things submitted to the Board prior to the closing of the records and those things are the updated operational guidelines and procedures, and the 1994 determination letter from DEP. Mr. Hanscom stated he would fax or email the letter to Ms. Coffin in the morning and the manual will be submitted no later than March 18, 2011. Mr. Hanscom stated that he will also check with conservation regarding the canal and the River Protection Act. Mr. Barlow asked if the paving they were considering was a part of their proposal or a separate issue. Ms. Coffin stated that it was part of this issue. Mr. Barlow asked if it was absolute to the project. Mr. Gallo stated that it was not. Mr. Barlow asked if they didn't pave it and just put stone down how was it different from backing a railroad car. Mr. Hanscom stated that they will all agree on the fact that if it is regulated under the wetlands protection act they will file with the conservation commission and that would be a separate permitting process that they would have to go through. Mr. Barlow stated that they do not generally make decisions on something that has not already gone through ConCom and that could become a stumbling block for the applicant. Mr. Hanscom stated that paving the road is not essential to the success of the project and if they wanted to do that at a later time and was regulated they could go before the conservation commission so they will take that out of their request on the application. Mr. Hardiman asked if they had an agreed upon date for the closing of the record. Mr. Hardiman asked if the date of March 17, 2011 was okay with the applicant. Mr. Hanscom answered yes. Mr. Wall stated that that date is adequate because it will give the applicant and the public two weeks to submit anything. Mr. Hardiman stated that they will set the date as March 17, 2011 as the date to close the record by 3:00 P.M. Everyone was in agreement. Ms. Coffin

asked if the public should be made aware that they can submit material until March 17<sup>th</sup> at 3:00 P.M. since no one from the public attended the meeting. Mr. Hanscom stated that he has been part of situations where they closed the public hearing when there has been no one from the public there. Mr. Hanscom stated that the public has had 21 days to comment and neither he nor Ms. Coffin has been contacted by any member of the public. Mr. Barlow asked if it was advertised in the local papers. Ms. Coffin answered that it was advertised in both papers. It was decided that the notice did not have to be re-advertised in the papers. Mr. Hardiman asked if the Board members and the applicant agreed with that. Everyone agreed. Mr. Hardiman stated that it was 7:45 P.M. and the hearing is closed.

**Mr. Andrews made a motion to ADJOURN the meeting at 7:45 P.M. Mr. Barlow seconded the motion. All in favor and the meeting is adjourned.**

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

Respectfully submitted by the Bourne Board of Health

Kathleen Peterson\_\_\_\_\_

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

Galon Barlow\_\_\_\_\_

Donald Uitti\_\_\_\_\_

Carol Tinkham\_\_\_\_\_



cc Board of Selectmen/Town Clerk