



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

**MINUTES
FEBRUARY 22, 2012**

**Members in attendance: Kathy Peterson, Chairman; Stanley Andrews, Vice Chair;
Don Uitti; Galon Barlow**
Absent Members: Carol Tinkham

Support Staff in attendance: Cynthia Coffin, Health Agent; Melissa Chase, Secretary
Absent Support Staff: Carrie Furtek, Health Inspector

Meeting was called to order at 7 pm by Kathy Peterson.

(Agenda item 2 taken out of turn to accommodate scheduling conflict of Engineering Firm)

**2) 6 Quiet Cove Rd: Warwick & Associates for Mark and Mary O'Donnell: continued
from Feb 8, 2012: request for variances for installation of new pressure dosed Title
V septic system for proposed renovations**

In attendance for this item was Barbara Frappier of Warwick & Associates. Ms. Frappier thanked the Board for accommodating her request to be moved up the agenda. She pointed out that the project had been before the Board at the last meeting (Feb 8, 2012). At that meeting, the Board had asked Ms. Frappier to revisit the system to get it back 150 feet from the wetlands, which they were able to accomplish. They also reduced the volume of the system to a 2-bedroom system. They also kept, against her recommendation/desire, a pressure dosed system. She reiterated that it is now a 2-bedroom pressure dosed system and is 150' from the wetlands, all as requested by the Board at the previous meeting. She is now asking only for the variances from the property line at the following measurements: 10 foot variance for the setback for the reserve area from the property line; 4.34 foot variance for the setback for the main leaching from the property line; and 4 foot variance for the septic tank from the property line. Ms. Peterson felt that Ms. Frappier had fulfilled the Board's requests from the February 8 meeting, and asked for a motion.

Mr. Andrews moved to approve the variances of 4.34 feet from the soil absorption system; 4 foot variance to the tank; and 10 foot variance for the reserve area for the property at 6 Quiet Cove Road with prints dated revised 2/12/12, received by the office on 2/22/12; architectural stamped received January 18, 2012 (*architecturals incorrectly identified by Mr. Andrews; newer/updated architectural are on record dated 2/7/12, received by BOH on 2/8/12*) and a 2 bedroom deed restriction to be filed prior to issuance of the permit. Mr. Barlow seconded the motion. The motion passed unanimously.

1) Wind Turbine Regulations: Discuss and possible vote on Town Counsel's Wind Turbine Regulation revision recommendations in response to DEP comments on Bourne's WTR

In attendance for this item was Town Counsel, Attorney Brian Wall. Ms. Peterson pointed out that none of the Board members spoke prior to the meeting regarding their thoughts on the matter. Attorney Wall was asked to attend this meeting to advise the Board as he had throughout the entire process. She asked Attorney Wall to go through his thoughts in order so that the Board could follow along and share their thoughts as well. Attorney Wall referenced a memo dated January 25 2012. He stated that this memo was in response to Department of Environmental Protection's (DEP) comments on Bourne's adopted Wind Turbine Regulations (WTR). The DEP had reviewed these WTR and expressed a number of comments and concerns. The first item of concern was issues arising under MGL 111-31C. Attorney Wall explained that whenever a regulatory body such as the Board of Health adopts regulations, you try to cite whatever source of authority you may have so that if there is a later challenge in Court, your "eggs are not all in one basket". He had looked at all sources of authority that the Board of Health has and said that the Board was using all that authority to support the WTR. He felt that the wording may have been too broad, particularly in citing 111-31; DEP broadened that scope to 111-31C which regulates atmospheric pollution, and over which DEP has over-site responsibilities. DEP said that it could not determine, based on certain provisions of the regulation whether it complied with their purview or not. Attorney Wall felt that a simplistic approach would be to delete it as a reference as to what authority the Board has. He believes the Board was not treating the noise and flicker as air pollution, but as a nuisance, and does not need that citation as authority to support the regulation. The removal of this citation would also clear up an issue (later in the memo) in regards to fines and enforcement. Ms. Peterson asked if Attorney Wall agreed with Ms. Coffin's suggestion to remove the words "*and all other authority vested in the Board of Health*". He agreed, and suggested removing reference to 31C as well. Ms. Coffin pointed out that 31C is not reference by the WTR, but rather that the DEP assumed it under the "all other authority"; sections 31, 122 and 143 are the only specific sections cited. Ms. Peterson asked Attorney Wall if the DEP can assume that the Board is thinking 31C. Ms. Coffin agreed, pointing out that in the first section of the WTR, those are the Sections cited, but DEP's comments include 31C, showing that assumption. Attorney Wall again stated that the best way to handle it is to remove the "all other authority" phrasing, and to leave just the specific cited sections. He felt that the Board's authority is well covered under those sections. Mr. Andrews said that 31C was never cited. Wall agreed, but said by having the "all other authority" phrasing, every single thing under which the Board could possibly cite as authority is encompassed, including 31C. Ms. Peterson read the revised phrasing as: "*Wherefore, acting pursuant to MGL Chapter 111, Sections 31, 122, and 143, the Board determined that reasonable regulations should be adopted for the protection of the public health and safety of the residents of Bourne, and on August 10, 2011, voted to adopt these regulations regarding WECS*". Ms. Coffin stated that there will also be phrasing added to reflect the date of revision/amended after the final vote. Mr. Andrews stated this would follow the original intent. Attorney Wall felt the discrepancy was his fault because he had inserted that caveat. His intent was to keep the Board covered should there be future challenges to their authority in regards to the WTR. He felt it was good draftsmanship, but that it triggered unforeseen problems, and is not necessary. By removing the phrasing, two problems (authority and fining) are solved. Mr. Barlow said that these regulations have not been in effect as of yet because DEP has not accepted them, and asked Attorney Wall if they needed to be re-advertised as if they are new regulations, or if they can simply be revised. Wall asked if the Board was aware of any projects having been filed; Mr. Andrews said the Board has not been made aware of any. Wall stated that strictly speaking, the Board does not have to re-advertise. DEP *allegedly* found a flaw. If the Board amends and removes that clause, and includes the severability clause, it should be fine. In an abundance of caution, it would not be detrimental to publishing them again as revised regulations. Ms. Peterson made reference to Section 143, which give the Board authority to regulate the citing of any trade employment which might constitute a nuisance or be harmful to the public, but also gives the person who is being permitted by the Board the right to appeal to DEP on any Board decision made. Ms. Coffin had questioned if that should be looked at as well. Ms. Peterson asked Attorney

Wall's opinion/thoughts on that. Ms. Coffin wondered if a project came before the Board and a negative decision was made, it could be appealed to DEP. Attorney Wall felt that a wind turbine was not a trade or employment, so it might not even be applicable. Ms. Peterson said the Board has the right to regulate what could be perceived as a nuisance, and that is why Section 143 was picked up. Attorney Wall stated that he would like to look further into the right of appeal to DEP, and will send a memo in that regard. The next comment of concern from DEP was in regards to the WTR applicability for WECS of less than 75 feet height. Ms. Peterson was in agreement with Attorney Wall that there was no need for clarification on this point. Mr. Andrews also felt it was quite clear that anything in excess of 75 feet or 10KW needed a study done prior. Mr. Barlow thought the confusion might be if it was over 75 feet but under 10KW. Attorney Wall thought that the Board's intent was not to regulate those less than 75 feet, that phrase could be eliminated from the submittal requirements, but keep the 10 KW exemption. The WTR as written state under applicability that *"No person shall construct or install a WECS higher than 75 feet in the Town of Bourne unless in compliance with these Regulations."* Ms. Peterson asked Attorney Wall how it should read, because she doesn't understand what the confusion is. Ms. Coffin stated that she felt the problem is not really this statement, but rather with the submittal requirements. These read that all WECS must provide notice to the BOH with a list of requirements, but the applicability seems to state that only WECS 75 feet and up are covered by the regulations. The interpretation is that if they are not regulated, the rest of the information should not need to be submitted. Basically what is needed is wording to mesh the "applicability" and "notice to BOH" sections. It was suggested by Ms. Coffin to remove the "higher than 75 feet" from the applicability section so that all WECS of any height must submit to the regulations, but the smaller ones will remain exempt from the ambient noise study. Mr. Andrews stated that there are parts of the regulation (noise, shadow flicker) that apply to WECS of all heights and KW. Attorney Wall then agreed that Ms. Coffin was correct in saying that the applicability needs to be amended. He felt that removing the "75 feet" from the applicability would address the DEP concern. Ms. Peterson asked Mr. Andrews how he wanted the applicability to read. He stated: *"No person shall construct or install a WECS in the Town of Bourne unless in compliance with these Regulations."* Attorney Wall pointed out that this will now be changing the adopted regulations, so they will need to be published when they are voted in. Ms. Peterson then referred to DEP's concern that the term "adverse health effects" under the notice section of the WTR is not defined, nor are "noise" or "nuisance" included in the definition section. In response to Mr. Barlow's belief that it is the DEP's opinion of what they believe are "adverse health effects" and how it may or may not include effects of noise pollution, Ms. Coffin pointed out that these words are not defined in the WTR. Ms. Peterson agreed with Ms. Coffin that the term "noise" needs to be defined, and "noise pollution" removed. Attorney Wall agreed as well, stating that the Board should consider defining "noise", "adverse health effects" and "nuisance." Ms Peterson read Ms. Coffin's suggestion for definition of "noise" as being *"unwanted or disturbing sound, or infrasound, that either interferes with normal activities such as sleeping, conversation, or disrupts or diminishes one's quality of life"*. Mr. Barlow thought this was a sufficient definition. Ms. Coffin felt that there "adverse health effect" also needs to be defined. She gave the general definition as being *"any change in body function or structures of cells that can lead to disease or health problems"*, with a more specific definition from Environmental Health Perspectives as *"the causation, promotion, facilitation and/or exacerbation of a structural and/or functional abnormality, with the implication that the abnormality produced has the potential of lowering the quality of life, contributing to a disabling illness, or leading to premature death."* Attorney Wall felt that including the basics that the Board had heard testimony/evidence on (loss of sleep, annoyance, frustration, depression, etc) may be good to include as examples of adverse health effects, along with the general definition. Ms. Peterson pointed out that those types of examples are included under the "purpose" section of the WTR. Attorney Wall stated that he felt that the DEP was concerned that "adverse health effects" was not clearly defined. Ms. Coffin pointed out, too that there is a definition of "noise pollution" instead of "noise", and the term "noise pollution" is not used in the WTR. Mr. Barlow felt that keeping the term "noise pollution" out all together and keeping "noise" would eliminate the conflict with DEP; he also liked both the "adverse health effect" definitions from Ms. Coffin, stating that the brief definition was just as all encompassing of the health effects as the longer definition. Ms. Coffin felt the two could be combined to gain the desired elements of each. Ms. Peterson

seemed to feel that an addition of the actual health effects (i.e.: *including, but not limited to, loss of sleep, frustration, depression, etc*) after a general definition. Attorney Wall felt that this type of definition would assist the Board when they are reviewing an application, to give them support to back up a refusal due to non-compliance to the WTR; it would all tie back to the definitions. Ms. Peterson moved on to the next DEP concern, the performance standards. Attorney Wall stated that he felt this was something that the Board has “grappled with” since the beginning, where to draw the limit for “noise”. DEP comments indicate that they are not clear how the cap value of noise is determined (ambient noise only or ambient noise + turbine). Mr. Andrews asked if a clearer definition of “cap” was needed. Mr. Barlow felt that the Board had intended for it to be the existing ambient noise plus the additional noise of the turbine. Mr. Andrews stated that the cap was placed to “cap” the amount of ambient noise + the turbine noise. Attorney Wall asked if the Board would like him to refine the language to reflect that objective. Ms. Peterson said yes. Ms. Peterson felt the DEP had more of a problem with the nighttime cap than the daytime cap. It was felt that “cap value” should be included in the definitions as “*the value, measured in decibels, of the total of ambient noise and the noise generated by the WECS*” to eliminate confusion. In regards to the Enforcement section, it was felt that as long as all 31C references have been removed, as the proposed amendments will accomplish, the enforcement section can stand as is. Ms. Peterson asked if there were any further changes desired. Mr. Andrews felt it was mostly just adding definitions, and removing the one phrase that DEP connected to 31C despite the Board not having intent to use such authority. Ms. Peterson asked if there were any questions or comments from the audience in regards to the WTR. *John Greer (?)* of Bourne stated that he was looking at the State regulations, and found that the State has a table broken down for “sound pressure level” for both day and night for industrial, commercial and residential. Their sound pressure level for night in residential area is 37. He felt that any increments over that would be where the Board determined their acceptance to bring up to the cap. Ms. Peterson stated that the Board was not encompassing only residential areas, but any WECS that may come in front of the Board for permitting. Mr. Greer felt that the range listed in the State regs may help the Board in determining their cap. Mr. Andrews addressed Attorney Wall, asking if the Town regulations can be stricter than, but not less than, State regulations, and asked if the Board would need to re-write or if they would automatically revert to the State guidelines. Attorney Wall agreed, and said that if the State changes their regs to become stricter, the Board would need to revisit their own WTR because theirs would basically be rendered moot. He recommended that the Board periodically revisit the WTR to make sure everything is in line with the State. Ms. Peterson thanked Attorney Wall and Ms. Coffin for their work on the DEP concerns. Ms. Coffin brought up a final concern of hers under the “enforcement” section, in reference to the fines. She recommended adding the phrase “, *and pursuant to the Board of Health Fine Regulation,*” which would give the Board the back up to incorporate the “all other” kind of thing. She also checked with Linda Marzelli (Town Finance Director) and any fines currently that come in go to the Town general fund. Ms. Coffin would like to look into seeing how to set up a separate fund for WECS fines accessible by the BOH for enforcement of the WTR, etc. She suggested wording such as: “*Any fines imposed under the provision of this regulation shall be turned over to the Town’s Finance department to be placed into an account set up by the BOH for enforcement of this regulation.*” Ms. Peterson remembered the Board had talked about this at the beginning of the writing process, and talking to the Town Administrator about it, and he was unsure of the procedure for doing such. Mr. Barlow wasn’t sure of the legality of the Board setting up such a dedicated fund without going to Town Meeting for approval. Mr. Andrews suggested looking into the process for future reference, but didn’t feel it was necessary right now. Attorney Wall also said he wanted to look into it.

Ms. Peterson felt that there was sufficient attention paid to the DEP concerns, and that amongst Ms. Coffin, Attorney Wall and herself they should be able to clean it up enough to acceptable. She asked for Attorney Wall to write a letter to DEP once the revised draft is done, explaining that the concerns have been addressed and the BOH WTR no longer fall under their guidance. **She stated that no vote or action would be taken this evening, but at the next meeting on March 14, 2012, the Board will discuss and vote on the final revisions to the WTR, and they will then be advertised.**

3) Pocasset Mobile Home Park : update from Attorney Charles Sabatt on Park status

In attendance for this item were Attorney Chuck Sabatt and approximately 20 PMHP residents. Attorney Sabatt stated that inspections have been performed on a weekly basis as per the Board requirements instituted in the fall. He has been conferring with Ms. Coffin, DEP, and the AG's office every 2 weeks. He was pleased to report that there had been no septic incidents and no water incidents in the past 30 days, making it the best 30 days since he took over as receiver. He stated that he had talked with Bill Gilpin about the leaching trenches installed last spring. There is an ongoing concern that they will not hold much longer. Mr. Gilpin has suggested that there may be a need for adding more trenches in the spring as an additional temporary measure. Attorney Sabatt has broached the matter with Brian Dudley from the DEP during that last conference call, and will coordinate with DEP on this. Attorney Sabatt has also had plans prepared for additional conduits to be installed to help relieve the system; there is a bid for that, and he plans to go through with that project. Ms. Coffin explained that the pipe work would basically be off the tanks and distribution lines. There currently is not a lot of pitch in the main tank down to the leaching area, and this causes back up into the main tank and the liquid level remains over the inlet. By doing these lines, the problem should be eliminated. The lines are planned to be placed in such a way that they can be reused should the treatment plant be built. DEP has reviewed the plan and are in concurrence. Attorney Sabatt stated again that this is intended to be a temporary fix to keep things functioning adequately until the final decisions are made. In terms of the future, Attorney Sabatt stated that he has begun the work on all the options that are on the table. He has informed the residents of the options that have been proposed, and he feels he made it clear to them what needs to be done. He has had a discussion recently with Mr. Danforth from CDI, which is an organization from Western Massachusetts that assists residents with buying parks. Part of what Mr. Danforth would do involves some of Attorney Sabatt's recommendations. It is Sabatt's hope that an ultimate solution will soon be found. In summary, Attorney Sabatt reiterated that the maintenance regime has been successful over the past few months, and he has hopes of a resolution to be coming at some point in the near future. Ms. Peterson asked Attorney Sabatt when he felt the judge from Suffolk Superior would be letting him know of her decision. He stated that he didn't know, but that he was going to speak with the clerk to schedule a conference with the Judge. He felt that if he requests a conference, they will schedule one. Ms. Peterson asked if there were any questions from the Board or from the audience. There were none. Ms. Peterson asked the Board when they wanted Attorney Sabatt to come back. It was decided that he would be placed on the agenda for the second meeting in March (March 28, 2012). Attorney Sabatt felt confident that the Judge will have come back with a decision by that point. Mr. Andrews stated he was pleased with Attorney Sabatt's recent presentation to the residents, and was glad to see the open communication going for them.

4) Stable Regulations: Discussion and possible vote on amending stable regulations (increase licensing fee to \$30/year and due date of July 1st of each year)

Ms. Coffin explained that this was basically just "housekeeping". The stable regulations had been redone recently. When the fees were increased in September, she had forgotten that the fees schedule was written right into the stable regulations and would need to be amended. There had also been a change in the due date of the license to January. That due date hadn't been followed through on and the stable owners are used to the July 1st due date, so Ms. Coffin felt putting it back to July 1st would eliminate confusion.

Mr. Uitti made a motion to amend the stable fee to read \$30 and amend the due date to July 1st. Mr. Andrews seconded the motion. The motion passed unanimously.

5) Approval of Minutes dated February 8, 2012

Mr. Andrews stated that he had a couple of corrections on the Minutes. Under item 1, there was a reference to a statement by Mr. Barrett in regards to a wheel washing facility being constructed. Mr. Barrett was not in attendance at the Feb 8 meeting; the statement was actually part of his operational plan submitted to the Board. *(Feb 8 minutes were amended to read "Mr. Barrett's operational plan stated that if it were necessary a wheel washing facility could be constructed.")* Mr. Andrews' next issue was with a typographical error in the last line of item 2; the date was incorrectly typed as January 22 instead of Feb 22. *(Feb 8 minutes were amended to read "Mr. Barlow made a motion to continue 6 Quiet Cove Road to the Board's next meeting on February 22nd".)*

Mr. Andrews moved to approve the Minutes as amended for February 8, 2012. Mr. Barlow seconded the motion. Mr. Uitti and Ms. Peterson abstained because they was absent at the February 8 meeting. The Minutes were approved.

Mr. Andrews made a motion to adjourn. Mr. Barlow seconded the motion. The motion passed unanimously. The meeting adjourned at 8:15 pm.

Respectfully submitted,

Melissa A. Chase
Secretary

Kathleen Peterson _____

Stanley Andrews _____

Galon Barlow _____

Don Uitti _____

Carol Tinkham _____

cc Board of Selectmen/Town Clerk