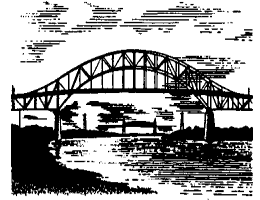


**TOWN OF BOURNE
BOARD OF HEALTH
24 Perry Avenue
Buzzards Bay, MA 02532
Phone (508) 759-0615 x1
Fax (508) 759-0679**



Cynthia A. Coffin,
Health Agent

**MINUTES
MARCH 28, 2012**

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

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

Meeting was called to order at 7 pm.

1) Monument Beach Marina: DNR Director Tim Mullen: Request for variances for septic upgrade for Monument Beach Marina

Present for this item were Bourne DNR Director Tim Mullen and Brian Yergatian of BSC Engineering.

Mr. Mullen stated that the septic upgrade is part of the reconfiguration permit that was applied for a few years ago that got approved last year. This is the first phase of the work to be done. Funding was approved in an Article at Town Meeting in the spring of 2011. Mr. Yergatian gave a brief overview of the system. The proposed system is based on Title V design flows: 99 slips, 20 restaurant seats, and public access at 5 gallons/day per parking space= total design flow of 2080 gallons/day. The proposed system will be outside of the resource areas (the current system is within a coastal dune). The system itself is an Innovative Alternative (IA) which includes a recirculating sand filter with proprietary parts by Orenko Systems. Basically, it is a 5:1 recirculation. Mr. Yergatian explained that when effluent comes in, it will go into a 7000 gallon tank. From there, it will go into a 2000 gallon recirculation tank and be pumped up into a sand filter bed. The bed is a completely closed system approximately 30 inches high with sand and pea stone with an impermeable liner around it; effluent trickles down through the bed, is treated and will be collected in an underdrain and routed back to the recirculation tank. This will happen 5 times before it is transferred into the 3000 gallon pump chamber. From that point, effluent will be discharged by pressure dosing into the proposed leaching field, which will be raised up 36-40 inches above the existing grade. He requested variances of the local 150 foot setback requirements: 99 feet from the coastal dune (bringing it down to 51 feet); 58 feet from the shallow fresh water marsh (bringing it down to 92 feet); and 57 feet from the coastal beach (bring it down to 93 feet). Mr. Barlow asked if it was by mechanical or electronic means that the system "knew" the effluent had circulated 5 times. Mr. Yergatian stated that it was mechanical, by means of a ball valve float that blocks the flow back to the tank when the level is at a certain amount. Ms. Peterson asked what happens if the mechanism breaks down or malfunctions, if will there be a

program in place for it to be regularly checked and maintained. Mr. Yergatian stated that that is most definitely an option. There are pumps involved and there are high water alarms. The system itself requires very little maintenance, which is an advantage of the system. Mr. Andrews asked if there was an alarm light for the system, an indicator light for when the system is off. Mr. Yergatian stated that there are both audible and visual alarms, but he would look into the type of alarm the Mr. Andrews was requesting. Ms. Peterson asked Mr. Mullen if he would be able to write in a visual check of the alarm system into his daily protocol with his department. Mr. Mullen said that, particularly in season (May-Nov), there is someone out there 7 days a week and they need to regularly check the gasoline monitoring system, so it can easily be worked in to the routine. Ms. Peterson requested for that to be actually written into the daily protocol checklist, and a copy of that to be sent to the office to have on record. Audience member *Mort Toomey* asked Mr. Yergatian for the average flow per day; Mr. Yergatian stated 2080 gallons/day. Mr. Toomey asked any particular wastewater treatment plant needed to operate it. Ms. Coffin stated that there will be a wastewater operator contracted for the recirculating sand filter, as the State requires for system maintenance, but it is not considered a wastewater treatment plant because it is less than 10,000 gallons/day. Mr. Toomey asked where the system backwash goes. Mr. Yergatian explained that there is no backwash as there would be in a typical in a water/waste water treatment plant, but after the effluent trickles down, it is collected by a slotted PVC pipe which is routed back into the recirculation tank 5 times before it is discharged into the leaching field.

Mr. Barlow made a motion to approve the requested variances of local requirements of 150 setback by DNR director Tim Mullen for the septic upgrade at the Monument Beach Marina as follows: variance of 99 ft from the coastal dune; variance of 58 ft from the shallow fresh water marsh; and variance of 57 ft from the coastal beach. Plans are drawn and submitted by BSC Engineering, received by the office March 22, 2012. Additionally, the Board requests the institution of the Board's standard testing policy for Alternative systems. Mr. Andrews seconded the motion. The motion passed unanimously.

**2) Cape Cod Regional Tobacco Control Program (CCRTCP): Bob Collett:
Discussion of tobacco issues and possible amendments to current tobacco regulations**

Present for this item were Bob Collett from the Barnstable County Dept of Health & Environment and CCRTCP; and Judith Coykendall with the Tobacco Free Community Partnership of Seven Hills Behavioral Health, working with 59 communities in Southeastern Massachusetts to assist with policy development. Mr. Collett came before the Board to touch base since it has been some time since he had spoken with them. He stated that his primary focus this year has been policy development at local communities across the Cape, and the program has expanded up to Kingston, Middleboro, Carver, Acushnet, Marion, Rochester and Wareham. He wanted to share with the Board a model regulation (Wareham's regulation) that many of the local communities have adopted or are considering adopting, either in whole or in part, to amend their own regulations. If the Bourne BOH were to adopt these regulations, it would represent some significant changes to the local youth access to tobacco. He stated that the last time that Board revisited the regulations was a couple years ago with the addition of the amendment concerning the use of electronic cigarettes. One of the particular regulations that Mr. Collett was sharing with the Board addresses not only the *use* of, but also the *sale* of electronic cigarettes, which is now "fairly rampant" in some areas. The cost of e-cigarettes has dropped significantly from \$60-80 to \$10-20. Some retailers don't ask for identification for the sale of the e-cigarette, even though they are a nicotine delivery product. He pointed out that the Wareham regulation has a definition of Nicotine Delivery Product (NDP) (*Nicotine Delivery Product: Any article or product made wholly or in part of a tobacco substitute or otherwise containing nicotine that is expected or intended for human consumption, but*

not including a tobacco substitute prescribed by a licensed physician or a product that has been approved by the United States Food and Drug Administration for sale as a tobacco use cessation or harm reduction product or for other medical purposes and which is being marketed and sold solely for that approved purpose. Nicotine Delivery Product includes, but is not limited to, e-cigarettes.) There are a variety of new products on the market that fall under the definition of NDP, including dissolvable nicotine products that look like candy (Altoids, Tic-Tacs) that can easily be mistaken as such, making them fairly undetectable in a school setting. There is also a high potential for overdose because they taste pretty good and are taken at will. There are also little packets like chewing tobacco, but that do not cause the salivation effect like traditional chewing tobacco so it can be stuck in the mouth undetected; there are also nicotine gels. Mr. Collett stated that another of the big changes calls for the prohibition of all tobacco products in health care institutions, to include pharmacies. This prohibition has been done in 26 communities across the state, including Boston, Worcester, Springfield, Fall River and New Bedford, constituting about 50% of the statewide population. He stated that the reasoning for this is that a pharmacy is a place where people go to obtain products/medications to improve health, and it is an obvious contradiction to walk past a wall of tobacco products on the way back to the medication counter. He says it is highly supported by the professional organizations of pharmacists across the US, and certainly across the state of MA, and has been met with no resistance to date in any of the communities that have adopted or considered adopting this regulation. This would prevent the sale of tobacco products in any store that has a pharmacy in it, including stores like Wal-Mart. Ms. Coffin asked Mr. Collett if BOH regulations are passed if it goes to the Attorney General's office to see if it is legal, as regulations passed in Town Meeting do. He said San Francisco was the first municipality in the US to pass this sort of regulation. There was a legal challenge, and it was defeated so the precedent has been set. Ms. Coffin stated that she understands the goal of the regulation, but feels that it kind of steps outside of what the BOH job should be. Ms. Peterson agreed, saying that business is hard enough, and she would want representatives from all the stores that would be affected (Wal-Mart, CVS, etc) to come to a public meeting and tell her that they don't have a problem with it. She stated that she has no problem with the "don't sell them to a minor"- period- end of story. She felt that immediate loss of license for being caught selling tobacco products to a minor was not a problem for her. Ms. Coykendall stated that the argument has come up a lot, and no pharmacy has stepped forward ever. Ms. Peterson asked why they agree to sell them. Ms. Coykendall stated that basically, pharmacies do not want to sell them, but they do not want to insult their smoking customers and lose their business. A regulation that is put in place takes the onus off of them because they are just following the regulations. Many pharmacies are becoming mini-medical centers, offering minor health care services, and should be considered "health care institutions", meaning they should fall under that heading in the regulations. Mr. Barlow felt that the Board needed to know how many businesses would be affected by this regulation. He also felt it should be submitted to Town Counsel for review. Ms. Coffin stated that there are 2 pharmacies in town with a 3rd coming into the new Market Basket. Mr. Collett stated that the only one that sells tobacco right now is CVS. Ms. Coykendall stated that she has not seen tobacco products in any of the Market Baskets that she has seen. Ms. Peterson again stated that she would like public input on the matter, as well as Town Counsel review. Mr. Collett stated that, nationally, the sale of

tobacco products in pharmacies constitutes less than ½ of 1% of their profits. Ms. Peterson said she would like to see the Board institute a policy of immediate loss of license for 30 days to any retailer that sells to a minor; no warnings, just immediate loss for 30 days. Mr. Collett stated that only 2 countries in the world allow tobacco sales in pharmacies: the US and India. He acknowledged that it was a topic with divided opinions, but reiterated that it has met no resistance in communities that have instituted the change. Ms. Coffin asked how the regulations that Mr. Collett shared with the Board compare to the current ones. He said that it tweaks some of the definitions and wording, but does not contain anything about the burgeoning business of the “roll your own” machines that are becoming available to retailers. Businesses that purchase the approx. \$30,000 machine obtain a right to exclusivity within a 3-5 mile radius that would exclude another purchase of a machine within that range. Consumers buy a bag of tobacco, and have a carton of cigarettes rolled for about \$30 or less, as opposed to \$70-80 of name brand cigarettes. He strongly advises adopting language specific to this as quickly as possible into the regulations, banning the machines. Ms. Coffin felt that even if it was not outlawed, there would most definitely need to be huge limited access restrictions. Mr. Collett stated that the owner of the machine could be required to be the sole operator of the machine, which would slow down the process. Mr. Barlow asked for clarification as to whether Mr. Collett was basically asking the Board to ban the sale of tobacco/NDP in pharmacies or everywhere. He said just in pharmacies because they fall under the definition of health care institutions. Mr. Barlow felt it was discriminatory against pharmacies, and felt that Town Council would really need to be consulted. Ms. Peterson said she would like the Board to compare Bourne’s regs to the provided Wareham regs, highlight changes and incorporate them into an amended regulation, including some restrictions on cigarette rolling machines. She also wanted the fine/loss of license for sale of tobacco products to minors to be made stricter. She invited Mr. Collett and Ms. Coykendall to return when the regs are drafted to look and comment before they are voted on. Ms. Coykendall stated that there was a concern of a tax evasion issue around the rolling machines because neither the consumer nor the vendors are paying a cigarette tax. Ms. Peterson said that she didn’t feel that the Board would adopt the ban in pharmacies. Ms. Coffin asked if it was actually enforceable to pull a license for 30 days. Mr. Collett said “absolutely”. Mr. Andrews asked for a comparison of the 2 regs. Mr. Barlow said he would like to see a requirement of a sign posting that the offender lost their license for 30 days for selling to a minor. Mr. Collett stated that the state has reduced the amount of required compliance checks to half of the retailers, so some towns aren’t getting any checks, some are getting partial, and some of the new towns are full checks. The compliance rate has been high; non-compliance has only been at 7.8 over the past two to three years across the state. The DPH felt that spending more effort in the retail environment, educating the retailers, making sure they have the required signage, product is behind the counter. He stated that there are many products now on the market that are inexpensive, undetectable and, because the cigarette market has outpriced the youth market, these less expensive NDP are becoming more prevalent among youth. Small cigars and blunt wraps are being utilized for marijuana use (tobacco removed and replaced with marijuana). Ms. Coykendall said that these flavored wraps are specifically targeting the youth market. Ms. Coffin asked if these products also have to be behind the counter. Affirmative response, so these product sales have to show ID as well. Ms. Peterson asked if perhaps Mr. Collett and Ms. Coykendall would come back

to review the Board's changes to the regulations at the second meeting in May (May 23, 2012) before the Board may take a vote on them. Mr. Mulvey asked if there was a pattern of the by-law to go by (affirmative). He also asked if Barnstable had developed their own regulations yet. Mr. Collett said both Barnstable and Yarmouth have regulations in the works, and that the pharmacy ban is at the top of their changes.

3) Wind Turbine Regulations—Discuss and vote on revised draft

There were no audience members in attendance in regards to this item. Ms. Peterson asked for a vote on the regulations as they have been presented.

Mr. Andrews moved to adopt the revised WECS regulations. Mr. Barlow seconded the motion. The motion passed unanimously.

Ms. Peterson thanked the Board, the Office and Town Counsel for all their work on the regulations, and stated that they are now on the books and are now enforceable. Copies are available through the office.

4) Approval of Minutes dated March 14, 2012

Mr. Andrews moved to accept the Minutes dated March 14, 2012 as presented. Mr. Barlow seconded the motion. The motion passed unanimously.

5) Pocasset Mobile Home Park: Attorney Chuck Sabatt: Update on Park status ~Possible Executive Session concerning issues related to PMHP litigation strategy

In attendance for this item were Attorney Chuck Sabatt and 12+ Park residents. Attorney Sabatt stated he would like to divide his report into 2 parts: one concerning the current status of the Park; the other concerning the status of the Court proceedings. In respect to the Park, the last time Sabatt was before the Board, he had stated how pleased he was to report that there had been no issues during that 30-day reporting period. There have now been several backups, mostly due to encroachment of roots into older lines. The areas have been excavated and old lines replaced with PVC. The other septic issue relates to the leaching fields. It has been reported to Sabatt by Mr. Gilpin that the D-Box at a level above invert pipe, which indicates that the leaching tanks are reaching capacity. Gilpin has recommended installing additional relief tanks in the area. Sabatt has approached this with DEP. The plan is to have Mr. Gilpin and Attorney Sabatt, along with Ms. Coffin, and hopefully Brian Dudley of DEP and Brian Yergatian of BSC, meet on site sometime after Monday the 9th to discuss again some further relief in the leaching field areas without further permitting through DEP. Sabatt feels that the DEP will approve it. As to the court proceedings, Sabatt had a conference with the judge on March 21st, along with Mr. Austin's attorney and a representative from the Attorney General's Office. He was unable to go into specifics because of the legality of doing so, but generally stated that he has given his recommendation to the judge as to the best option for moving forward with a resolution to the "Park issue". His sense is that the Court is willing to move in the direction he recommends. There is a process that has to be taken, and Mr. Austin, regardless of public opinion, does have the same legal rights as anyone else. They are in some uncharted legal territory at this point, and they need to move carefully. The Attorney General's office has a motion being served to Mr. Austin's attorney and will be presented to the Court. It relates to financial matters and is part of the process. It is trying to get a handle on some financial resources, through which they may be able to move forward to resolution. The feasibility report that has been filed by Sabatt had not, at this point, been docketed at the Court. *(note: the Office had received email notification from Tracey Triplett at the AG's office that the feasibility study was now public record and could be*

given out). The issue in all of this is money. No matter what the outcome, finances are needed. If the Park closes, state law requires a 2-year notification of residents; tenants/residents must be either bought out at the appraised value of the unit or paid relocation costs. If the Park is left open and the treatment plant is built, the price tag is somewhat staggering. So, the issue is money and where to get it from. Sabatt has presented options to the Court, and has made his recommendations. The legal process has to be followed, which is complex. There must also be a practical process of implementing the options laid out. Sabatt felt it was his feeling that he and the Court recognizes that the Park is a place where people live, and they just can't say they will close it and be done with it. He feels they have to implement a resolution and be able to continue to provide housing for the people that live there. He felt all that he could do right now was to continue to remediate problems to the best of his ability and continue to maintain the financial integrity of the operation as best he can so that the resources will remain available as issues arise. Sabatt feels he is doing a good job of keeping up with the repairs as they come up. He stated that he is headed back to Court on April 10th for another conference with the Judge. An opportunity was given to Mr. Austin's attorney to consult with Austin in regards to the options that are on the table for moving forward. Attorney Sabatt asked for any questions. *Mort Toomey* asked what caused 3 pipes to fail at once. Ms. Coffin explained that the biggest problem that has been an ongoing battle is root intrusion into the old pipes. The repairs that are being done meet Title V code. Attorney Sabatt feels that the mild winter and early spring may be contributing to the growth all at once. Ms. Coffin stated that the D-box in question is not the main box in the field itself, so it isn't quite a panic situation, but feels that it is good to be proactive. There are still 7 or 8 dry pits. *Charlie MacDonald of 4th Ave* asked if the filed documents were in regards to the Court injunction that was done 10 months ago against Charlie Austin. Sabatt explained that it was the feasibility study, and that he had asked for it not to be made public until the Judge had a chance to look it over and until he had an opportunity to speak with the residents. As of March 21, it was agreed that it could be made public. The injunction that Mr. MacDonald was referring to is the injunction that placed Attorney Sabatt into receivership of the Park. *Diana Barth of the Enterprise* asked if there was a separate issue between the septic system (which was the original reason the AG's intervened) and the roads and electricity and other issues. She wondered if some parts were going to be easier to resolve and fund. Sabatt stated that it was all together on one price tag. *Jim Mulvey* stated that he would like to see a chart with figures of estimates of what it would take to fix the infrastructure, as well as what the income projections for the Park might be. Sabatt stated that all of that information is in the feasibility report, including a plan of allowing the residents to purchase the Park with the requirement of building the wastewater treatment plant. *Joe Pacheco of 5th Ave* asked if Attorney Sabatt had any plans to meet with the residents again. Sabatt stated that he was planning to meet with the residents on the 14th of April, which would be after his conference with the Judge.

Attorney Sabatt at this time withdrew his request to enter into Executive Session, and would like to reconsider it for the after his meeting on April 10. He originally wanted to provide the Board with more specific information as to where he felt they were standing, but after some consideration, felt it would be best to postpone that information until after the next meeting with the Judge, allowing him to talk to the AG's Office as well. Ms. Peterson expressed some displeasure with his request to withdraw. Mr. Barlow stated that he didn't want to see Attorney Sabatt's argument to the Court deteriorate because of information being given to the Board, and would rather wait. Sabatt agreed, saying that he didn't want to prejudice anything. He did reassure the Board and the residents that the Judge is very much on top of the issues. Mr. Andrews asked for clarification as to the availability of the Feasibility Report to the public. Sabatt stated that it should have been in the file. Ms. Coffin stated that she had received email confirmation from Tracey Triplett that the document was released for public viewing. *Park resident Robin Harris* stated that she had already received an emailed report from Tracey Triplett. Ms. Peterson asked Attorney Sabatt to send a letter to the Office stating why he withdrew his request for executive session so that the office will have it on file. Ms. Coffin asked when Attorney Sabatt would like to be on the Agenda again after his April 10 meeting. He requested to be on the April 25, 2012 Agenda to give him time to discuss other issues with Mr. Gilpin. He apologized again for withdrawing his request. Mr. Barlow commended Attorney Sabatt for his hard work at

trying to resolve the issues at the Park. There were no further questions or discussion on this item at this time.

Mr. Andrews moved to adjourn. Mr. Barlow seconded the motion. The motion passed unanimously. The meeting was adjourned at 8:09 pm.

Respectfully submitted

Melissa A. Chase
Secretary

Kathleen Peterson_____

Stanley Andrews_____

Galon Barlow_____

Don Uitti_____

Carol Tinkham_____

cc Board of Selectmen/Town Clerk