



Cynthia A. Coffin  
Health Agent

# TOWN OF BOURNE BOARD OF HEALTH

24 Perry Avenue  
Buzzards Bay, MA 02532  
Phone (508) 759-0615 x 1  
Fax (508) 759-0679



November 28, 2012

**Members in attendance: Kathleen Peterson, Chairman; Stanley Andrews, Vice-Chairman; Don Uitti, Secretary, Galon Barlow and Carol Tinkham**

**Support Staff in attendance: Cynthia Coffin, Health Agent; Lisa Collett, Secretary**

**Meeting was called to order at 7:00 P.M.**

Ms. Peterson opened the meeting a little after 7 Pm due to technical difficulties with the tape recorder. She stated that agenda item #1 regarding ISWM would be put off since Dan Barrett was not present for the discussion yet. Therefore item #2 was taken first.

**1. 7 Bennets Neck – Michael Mulligan of Absolute Building Consultants – Request to amend the architecturals of record.** Mr. Mulligan identified himself. He stated that when he originally purchased the property he was building a house for spec so he built it smaller than it was originally zoned for. He did find a buyer who would like to have a big dining room and a big bedroom. She is not interested in any more bedrooms. Therefore the plans were amended. An addition was added to the side. Ms. Peterson clarified with Mr. Mulligan that the house was only under agreement with the new party and had not yet been sold. Mr. Mulligan went over the plan. He stated that on the original plans there are two columns that separate the dining room and the living room. These columns were eliminated. There will be a dining room table in that open area. The kitchen will also be large. There will be an open living/family room addition and there will be a main entry door into that new room. Mr. Andrews asked if the only real changes were the family room and the master bedroom master closet. Mr. Mulligan stated that the one bedroom was made bigger, one bathroom was made bigger, and one closet that was near the Jacuzzi was eliminated as well. The closet is now over the room. Ms. Peterson asked the dimensions of the proposed additions. Ms. Coffin stated that the proposal was for an 8' x 16' walk-in closet for the master bedroom and a 16' x 22' foot living room. Mr. Andrews asked Ms. Coffin if the additions would exceed any of the Board of Health criteria and Ms. Coffin stated that the percentages of increase were not really relevant here because the previous approval was for new construction and the Board of Health already approve the variances along with an alternative septic system with pressure distribution. Ms. Coffin also stated that the septic system has already been installed. She stated that the number of bedrooms has not changed. She just asked Mr. Mulligan to come back before the Board to approve the changes so that she could draft a new letter to be recorded reflecting the amended architecturals. Ms. Peterson asked if the Board voted a bedroom deed restriction but Ms. Coffin said that the Board did not. The approval was for a three bedroom house and Ms. Peterson stated that she would like to be a deed restriction here. **Mr. Andrews made a motion to approve the revised architecturals received Oct. 25, 2012 and to have a three bedroom deed restriction recorded for the property as well. Mr. Uitti seconded. It was unanimous to approve.**

**2. ISWM – Dan Barrett- In accordance with section VI, Item X of the Site Assignment dated June 27, 2012, discuss and possible vote regarding whether or not to allow the Town Administrator in his capacity as Chief Procurement Officer, Board of Selectmen, and any of their respective duly authorized designees, to enter into negotiations toward the development of an Interim Development Agreement (IDA) with Harvest Power, Inc. and/or any of its affiliates or subsidiaries.** Ms. Peterson made a notation that there was a typo on the date of the Site Assignment and it should read June 27, 2005. That correction was made. Mr. Barrett to give an update on the landfill but Ms. Coffin stated that this item had not been placed on the agenda. Therefore Mr. Barrett went on to discuss the RFP process. He stated that two weeks ago the Board of Selectmen invited the Board of Health to a Selectmen's meeting to discuss the process of moving the development of the RFP's forward. The Board of Selectmen indicated that they would like to appropriate steps to initiate negotiations with the vendor chosen by the Working Group RFP Review Subcommittee. At that meeting Chairman Peterson pointed out that in accordance with Section VI, Item x of the Site Assignment dated June 27, 2005 issued by the Board of Health to govern over activities on the 25.22 acre parcel located at the south end of the facility, the Board need to authorize commencement of negotiations. The Board of Selectmen, Town Administrator, and ISWM staff agreed and enlisted the help of Special Legal Counsel, Mark Calpen, Mr. Calpen agreed with the Chairman's assessment and wrote up a draft proposed motion to accomplish compliance with the Site Assignment requirement. That is why Mr. Barrett is before the Board of Health this evening. ISWM would like a vote of the Board of Health so that the process can move forward. Ms. Peterson asked the Board members to look at the draft and stated that Mr. Andrews had some ideas for proposed changes. Ms. Peterson stated that Mr. Andrews would like the last second of the last sentence removed. The wording of concern is that the vote would fully satisfy the requirement and intent of the Site Assignment. There was further discussion among the Board members and it was decided that the last sentence would be deleted in its entirety. The Board does not want anyone to think that all of the requirements of the Board of Health have been fully met. Mr. Andrews said that it is hard to sign off on a lease that the Board hasn't even seen. Ms. Peterson and Mr. Barlow said that any vote that the Board takes tonight does not imply that the Board is signing off on the lease. Mr. Barlow went on to say that it was made clear to the Selectmen that if the Selectmen wanted the Board to sign off on something that they would have to come to the Board themselves to make that request. He stated that the request should not come through Mr. Barrett. He believes that second hand information may not be the most accurate. Mr. Barlow also stated that only the Town Administrator has the authority to sign contracts. Mr. Barrett stated that this was addressed in the draft vote language. Mr. Barlow feels that the draft wording is way too broad. Mr. Barrett stated that the wording was a result of the meeting with the Board of Selectmen and Board of Health where it was stated that the Board of Selectmen could not go forward without the hearing that is being held tonight for a formal Board of Health vote. Mr. Barrett does not agree that the draft is broad and read from a section of the draft which states that "said site lease and landfill gas purchase and sale agreement will not become effective until the Board (of Health) has convened a public hearing to consider the modification of the site assignment on the 25 acre parcel". Mr. Barrett went on to state that nothing can happen until the Board of Health does that. Mr. Barlow feels that the public hearing should be right up front and that abutters probably within three quarters of a mile should be notified. The Town should not be going forward developing something until everyone knows what it is and what the long term implications are going to be. Mr. Barrett stated that the Town is at the point where they cannot move forward. Harvest Power has not done any specific plans yet, nor will they, until the Town, i.e. the Board of Health, allows the Town to negotiate with them. There was further discussion about the wording of the site assignment. Harvest Power needs to know what the Town is going to expect of them before they develop the project. In order for Harvest Power to go forward and develop the engineering plans for this project and spend a million and a half to two million, and not sink one shovel into the ground, they need a commitment from the Town. We need a notice of award and a notice to proceed. If we don't move forward, there is nothing to review and the project is killed. There was discussion between Ms. Peterson and Mr. Barlow as to why this issue is being brought before the Board, as it is being done tonight. Ms. Peterson stated that Mr. Barrett still has full control of operations at the landfill and it is legitimate for him to come before the Board to ask for this vote. Mr. Barlow read from the draft and stated his concerns that the Board members and Town Administrator are not here before the Board. He went on to stated that if the Board allows things to go forward it has to be on a very limited basis. The residents and the community has to be made aware of what is going on. Ms. Peterson stated that the Board has to allow them to go forward

so that plans can even be developed. Ms. Tinkham is concerned about the last sentence on the draft which stated that "in addition this vote shall notify the public that the Board has reviewed this matter relative to section VI, item x, of the site assignment" and the Board really hasn't reviewed anything. Ms. Peterson stated that tonight's vote is only to allow the Selectmen only to make the award to Harvest Power but only as it relates to item x. Ms. Peterson says that we can change the draft. Mr. Barrett read from the draft again..." The vote in no way abrogates the powers of the Board of Health to regulate and oversee all current and future operations conducted at the facility located at 201 MacArthur Blvd. in Bourne, MA. Mr. Barrett put that sentence into the document. If in the future there were any issues with odor, there is nothing in this document that would remove the ability of the Board of Health to 'pull the plug' on the operation. Mr. Barlow stated that air pollution lies with the State but Mr. Barrett stated that he disagreed in that anything involved with the solid waste operation can be regulated by the Board of Health. Mr. Barrett stated that the document is only to clarify to all parties that the Board of Health is okay with going forward with negotiations of an interim development agreement and that the signing of the IDA is merely an acknowledgement that the Town and Harvest Power have come to an agreement relative to financial compensation and appropriate safeguards to protect the interest of both parties during the development phase of the project. Mr. Barlow stated that the Board needs a policy for a lot of issues related to this project. Ms. Peterson said that this vote is to bring to the forefront who actually is in control of the landfill. Nothing can be done at the landfill without a full vote of the Board. This was put into the site assignment. Mr. Barrett neither supports nor disapproves the project the way it stands. His job is to try and get to a point where he can make an intelligent decision based on the information supplied to him and right now he does not have that information. Mr. Barrett read from the draft again..." the signing of the interim development agreement by the Board of Selectmen in no way circumvents the authority of the Board of Health to approve, approve with conditions, or disapprove this project based on its review of the proposed facilities impact." The Board still has to review the project relative to its impact on health, safety and quality of life of immediate abutters and all the citizens of Bourne. Ms. Peterson has a problem with talking about final review, but the site assignment is the final thing that will be opened. There will be many more meetings before the site assignment modification ever takes place. Ms. Peterson said that she does have a problem with the first paragraph's last sentence "said interim development agreement shall be prepared with specialized legal counsel approved by the Board of Selectmen and shall be approved as to form by Town Counsel"... Ms. Peterson says that before anything is signed by the Board of Selectmen, the Board of Health needs to review it. The Board of Health needs to review every step. Mr. Andrews stated that he doesn't see why we are passing on a motion to allow the Selectmen to do anything. His thoughts are that we are getting to the point where the Board of Health needs its own specialized legal counsel. The lease will need to be reviewed by the Board of Health and we should have legal and environmental counsel that works for the Board of Health and no one else and who reports to the Board. He feels that this is the time to engage that legal counsel. Mr. Andrews said that the cost would go to ISWM but Mr. Barrett said it would be the project proponent. Mr. Andrews stated that Dan Barrett is the proponent before the Board of Health. Mr. Barrett respectfully asked, what is it that the Board is talking about reviewing? There isn't anything to review yet. Mr. Barlow talked about the RFP review report. Mr. Andrews said that right now Mr. Barrett needs to be able to go forward with the interim development agreement and that is all that is needed right now. He feels that the draft wording for the vote goes beyond this and is far too broad. Mr. Andrews would like to rewrite the whole thing. Ms. Peterson stated that she has asked for a lists of attorneys from a number of people but she has not received anything yet. She wants to review attorneys to choose one. She wants the whole process to be reviewed for the Board by an attorney that is working for the Board. Ms. Coffin asked what exactly was the interim development agreement because it is not specifically defined in the document. Mr. Barrett stated that the interim development agreement is the initial process that protects both parties and is negotiated by both parties. It provides the releases for each party to get out if there is a problem. It also includes the negotiations of the site lease and the gas sales agreement. These are the two things that Harvest Power needs a financial commitment from the Town on in order to go to their investors to say that they should go forward. Ms. Coffin does not understand why the Board of Health is getting in to what seems to be financial issues. She feels that the financial decisions should be made by the Town Manager. She stated that there isn't anything in the IDA that talks about what the odors are or about what the operations are. Mr. Andrews stated that it may talk to the technology and what they are doing and that comes under the Board of Health. Mr. Andrews stated that it is important that the Board reviews each of these steps as we go forward. Ms. Peterson asked for a copy of the site

assignment and Mr. Goddard provided one. Ms. Peterson stated that the Board can made a decision on giving them the authority to go forward to a point to develop the agreement, come to terms and before anything is signed on that agreement come back to the Board of Health for review to make sure that there isn't anything in the IDA that raises a red flag. Mr. Barrett said that there isn't anything to say that there couldn't be something in the lease that would relate to health and the environment, which needs to be controlled by the Board of Health. Mr. Barrett said that if we don't go forward to tonight though, then the project will be killed and can't go forward. Mr. Andrews offered a proposal ... the Board votes to allow the ISWM department to engage Harvest Power, the selected vendor from the RFP process, to develop an IDA (Interim Development Agreement) for the Board to review prior to enactment. Further, an attorney should be made available for the Board at that time." Ms. Peterson said that this is not a motion yet. Ms. Peterson wants to make sure that Mr. Barrett has something so that he can move forward. She doesn't want to stop the whole process. She stated that the Board of Health has to vote on something to allow Mr. Barrett to work with Harvest Power. She also stated that we should say the general manager of ISWM, or his designee. Mr. Barrett said that we need to address Section VI, Item X. Mr. Andrews stated that the motion will still contain reference to this section of the site assignment. There was further discussion as to the rewording of the Board's vote. Ms. Peterson read the new wording..."the Bourne Board of Health votes to authorize the ISWM Department, and/or their designee, to engage Harvest Power, the selected vendor from the RFP process, to develop an IDA (Interim Development Agreement) for the Board to review prior to enactment. This is specified by Section VI, Item x of the site assignment dated June 27, 2005." She asked Mr. Barrett if this gave him enough authority. She would like the following also left in the wording ..."This vote in no way abrogate the powers of the Bourne Board of Health to regulate and oversee all current and future operations conducted at the facility located at 201 MacArthur Blvd in Bourne, Massachusetts." Ms. Peterson added the next section of the draft which followed but the Board decided only to include the ..."This vote is conducted with the intent to clarify to all parties that the Board approves the Town moving forward with negotiations of an Interim Development Agreement." Ms. Peterson again asked if Mr. Barrett would be able to go forward with the wording proposed and he felt that it would be sufficient. Mr. Goddard wants some clarification. He said that they are trying to get thru the procurement process. The first step in the process is the award to Harvest Power. Mr. Goddard is concerned if the Board doesn't allow anyone to sign anything then the purpose of this meeting is not being met. He said that the procurement can't go forward. Mr. Barlow said that the Board is allowing the project to go forward to develop the IDA and that includes the award. The members stated that the Town Administrator can still issue the award if the Board votes to allow the IDA to go forward. Then the Board will review the IDA. Then after that vote, the permitting process will continue and then Harvest Power will come back to the Board of Health to look at the site assignment. Ms. Peterson stated that there will be many meetings before the Board of Health before the site assignment is even discussed. **Mr. Andrews read his final motion....** **The Bourne Board of Health votes to authorize the ISWM Department, and/or their designee, to engage Harvest Power, the selected vendor from the RFP process, to develop an IDA (Interim Development Agreement) for the Board to review prior to enactment. This is specified by Section VI, Item x of the site assignment dated June 27, 2005. This vote in no way abrogate the powers of the Bourne Board of Health to regulate and oversee all current and future operations conducted at the facility located at 201 MacArthur Blvd in Bourne, Massachusetts. This vote is conducted with the intent to clarify to all parties that the Board approves the Town moving forward with negotiations of an Interim Development Agreement."** **Mr. Barlow seconded the motion. It was a unanimous vote to approve the motion.** From the audience, Mr. Gately asked if the Board's concerns tonight was merely about verbiage and language and Ms. Peterson answered yes. Ms. Peterson states that Board will have other chances to vote on the operation and the proposal itself. Mr. Gately asked how long it takes for an IDA to develop. Mr. Barrett stated that it will probably take three to four months. Ms. Barth, from the audience, asked what was included in the IDA. Mr. Barrett answered that the IDA will include the gas sales agreement and all the details that will protect both parties during the development phase. There were questions as to the nearest operation that was anywhere nearby. Mr. Barrett said that there was a similar anaerobic digester operating in Jordan Farms in Rutland that is anaerobic digestion of cow manure. There is also a different process in Vancouver being developed.

**3. Pocasset Mobile Home Park –attorney Chuck Sabatt- update on Pocasset Mobile Home Park -** Attorney Sabatt addressed the Board as the temporary receiver for the Pocasset Mobile Home Park. With

respect to the Park, a significant repair of the septic conduits and some in ground septic tanks installation have been completed near the juncture of Third and Fourth Ave. The work involved excavating the roadway, removing old tanks, changing the elevation of the conduits, and the installation of new conduits to the leaching area. Mr. Sabatt stated that new drainage for road runoff has also been put in. The old hardtop in this area has been removed and it should be paved tomorrow. The project will then be completed. The second major project that is on the drawing Board is to install some new leaching structures. This would be similar to what was done in 2011. The plan is finished and is before the DEP for review but there has been no approval yet. Mr. Sabatt was hoping that the plan would be approved as he had hoped to get work done before the cold weather. The project may need to be put off till late March early April of 2013. If the plan is approve quickly, the leaching might be put in before the end of the year. There have been no issues with respect to backups or overflows that he is aware of. As to the major issue of the prognosis for the construction of the onsite wastewater treatment plant, the motion, seeking a modification and stay of the Superior Court judgment that was filed by Mr. Austin's attorney, still has not be acted on. Mr. Sabatt has not received any funds from Mr. Austin. There has not been any hearing scheduled from the judge. That matter is still pending just as it was in September. One related development is that a temporary guardian has been appointed for Mr. Austin. Last month the Probate Court appointed temporary co-conservators, i.e. his daughter and his son. Mr. Sabatt has spoken to them briefly and they are in the process of identifying his assets and also securing some of his assets regarding some stock. They have to return to Probate Court within the next two weeks to review the temporary conservatorship. This may has bearing on the Superior Court decision. Ms. Peterson asked whether Mr. Sabatt thought that the judge would keep Mr. Sabatt as the receiver now that there are conservators handling affairs. Mr. Sabatt stated that he thought that he would remain the receiver. He believes that the Court wants to see the project completed and reviewed by an outside third party. The Probate Court had made it clear that the conservators will have to adhere to the Superior Court order. The Probate Court will have no effect on the receivership. That is the status as Mr. Sabatt knows it. Mr. Sabatt stated that he has a meeting with the residents scheduled for Dec. 2<sup>nd</sup> at 1 PM at the Pocasset Community Center. He met with the residents on October 20<sup>th</sup>. Ms. Peterson asked about the contract for the road plowing this winter and Mr. Sabatt stated that he believes that Mr. Valeri will do some cold patching like he did last winter to prepare for plowing. Mr. Barlow stated that the Board would like a copy of the plowing contract. Ms. Peterson stated that the Board needs to hold a hearing on the Park license for 2013; it was decided that the Board would do that hearing on December 12<sup>th</sup>. Mr. Gately, from the audience, asked if there was an estimated cost on the wastewater treatment plant. Mr. Sabatt answered that the cost for the plant would be around 1.5 million, and with the roadway repair, and the sewer line would be 2.7 million. The water lines would be an additional \$650,000. Ms. Barth, from the audience, asked if Mr. Sabatt has been able to reach Mr. Austin's assets and Mr. Sabatt stated that there is a current injunction that restrains Mr. Austin and his conservators from transferring or disposing of any of his assets. There has been a disclosure of his assets to the Attorney General's office. There is still an asset of \$100,000 that has been frozen depending on a determination as to whether this money is an asset from the Park. This money was transferred right before Mr. Sabatt took the receivership. Mr. Sabatt stated that he hoped that by the end of January there might be a decision by the Court.

**4. Approval of minutes for October 24, 2012.** Mr. Andrews stated that there was a typo on Page 3 of the minutes, half way down the page in the bold section. Ms. Andrews needs to be changed to Mr. Andrews. The correction was made. **Mr. Andrews then made a motion to approve the minutes of October 24, 2012 with the correction. Mr. Uitti seconded the motion. It was a vote of 4 to approve, with Ms. Peterson abstaining since she was not at the meeting.**

Mr. Andrews made a motion to adjourn. Ms. Peterson seconded the motion. The meeting adjourned around 8:30 PM.

Respectfully taped by,  
Lisa M. Collett

Secretary Board of Health Minutes November 28, 2012.

Reviewed, typed and approved by

Cynthia A. Coffin  
Health Agent

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

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

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

Don Uitti\_\_\_\_\_

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

cc Board of Selectmen/Town Clerk