



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

**MINUTES
May 11, 2011**

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

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

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

Ms. Peterson stated that she would like to congratulate the Town of Bourne on the recent tobacco compliance checks on local businesses. There were no violations. Ms. Peterson stated that she would like to move agenda item number 5 up to number 1 as Town Counsel is present and he has another meeting to get to.

- 1. Wind Turbine Regulations-Discuss & Possible Vote on Proposed Wind Turbine Regulations-**Ms. Peterson thanked Town Counsel, Brian Wall for coming to the meeting tonight. Ms. Peterson stated that there are some changes to the regulations she had drafted that Mr. Wall would like to change. Mr. Wall stated that he had received the draft on Monday and was busy with Town Meeting on Tuesday so he has not had a lot of time to go over the regulations. Mr. Wall stated that whenever an administrative body like the Board of Health adopts regulations there has to be a rational relationship between the regulation that you are proposing and the thing that you are trying to regulate. If you don't meet that standard the regulation is susceptible to challenge in the Superior Court. Mr. Wall suggested that the Board come up with a preamble or a factual finding from all the conflicting evidence they have heard on the effects of sound and flicker that turbines can create and make some findings as to what they believe the evidence suggests. The evidence does not have to be beyond a reasonable doubt. Mr. Wall used tobacco regulations as an example because in the 50's and 60's there were no regulations but today it is known there is a problem and the regulations have evolved. You need to make findings based upon what you think the evidence suggests and if you think there are effects to public safety or health you make

findings to that effect. Mr. Wall stated that some of the ideas in the draft are a good start to how they will regulate the findings. When courts review regulations there has to be certain standards in the regulations so that a court can determine the Boards application of its regulations is reasonable. Mr. Wall stated that a good example of that would be the zoning bylaw that just got amended this week. It used to say 10 decibels at the property line and that was a standard that someone could point to. If you are going to get into sound you have to have a standard. Mr. Wall stated that at the special town meeting Attorney Senie had quite a bit of information about the decibels and the A scale and C scale but you need to have a standard that someone can point to. In the draft that was written it read *the noise created should not aggrieve any persons land*. Mr. Wall stated that if a court were reviewing that you can't have an individual abutter say that they are aggrieved and then tell someone they can't have a turbine. There has to be an ascertainable objective standard. Ms. Peterson stated that when she was working on the regulations she did find previous rulings that were made by the court and upheld on that verbiage. She wanted to make sure that there had been precedents set and there had been. Ms. Peterson asked if they could write that into the regulation about precedence and it being upheld. Mr. Wall stated he does not think you write that into the regulations. Mr. Wall stated that the BOH does have broad powers to regulate public health. There was a case from the Town of Bourne about 20 years ago for a local bylaw that imposed a setback that was much more stringent than State title V and it went up to the Court. The court said that the BOH has broad power to regulate and if the soil conditions in Bourne are different than the rest of the State you have every right to have a more stringent standard. Another case was the Moose Head Lodge in Yarmouth where second hand smoke became an issue. Mr. Wall stated that he believes it was the Yarmouth Board of Health in that was one of the first to say no more smoking in bars and restaurants. Mr. Wall stated that he thinks the Board has jurisdiction and authority to regulate in this area but they need to make findings that a turbine does create effects that are adverse to public health and then they need to say when and how they will regulate that. Mr. Wall stated that he thinks they should have a definitions section. They could use the zoning bylaw as guidance. Mr. Wall stated that he brought a copy of the warrant from the special town meeting which is set up in a very logical way. It talks about the purposes and when it will be applicable and then it defines what a wind turbine is and then it starts about how to regulate it. Mr. Wall stated that the Board should think about it in the terms that they have heard evidence, they think there are adverse effects by audible and sub audible sound and by flicker and are going to regulate them. Here's what a wind energy conversion system is. Anyone above a certain size or kilowatt or anyone, as you have written here, requires a permit and these are the standards they have to meet. Mr. Andrews stated that, just as they did with the site assignment they just completed, they had read through their facts and findings and worked list by list. That is the method he believes they should be operating with right through this. Mr. Wall stated that he does not believe that they have to make as many findings but that same process would be a good way to do it. Ms. Peterson stated that they have already completed 80% of that and the last part to do is to review what they

have and format it with counsel here. Mr. Wall agreed and stated that the Board needs a preamble that could say something like *after multiple public hearings and hearing testimony from people in the industry, experts, abutters, and members of the public the Board has made a determination that wind turbines may affect public health because they generate noise and they generate flicker. Those things can have effects on public health such as loss of sleep, depression, headaches and everything else the public has come in and told them. Accordingly, the board has determined that they may present a threat to public health and to make sure that they don't they are adopting some standards that, in Bourne, they must comply to.* Mr. Wall stated that in the event that the regulations are challenged in court you need to orient the court to say why did the Town adopt these regulations? Mr. Wall stated that the Town adopted them because the Board of Health sat through many night hearings involving multiple hours where they heard evidence from both sides and, although the evidence is conflicting, everyone makes up their own mind about these things. It was then decided that Mr. Andrews would take the draft and write the regulations. Mr. Andrews will send the final draft to Mr. Wall and Ms. Coffin. Mr. Andrews stated that he will format the regulations by starting with the purpose, the definition section, the statement of finding and from there he will break it down to the points that were brought out from the Board and insert blank spots for the standard values. Mr. Wall stated that the statement of finding can be led into the purpose. Mr. Wall told Mr. Andrews to call him if he had any questions. Mr. Andrews stated that he would get the draft to Mr. Wall by Monday. Mr. Wall stated that he would have time to look them over before Thursday but he may have a scheduling conflict for the meeting on May 25, 2011. Mr. Wall gave Mr. Andrews a copy of the standards that the Cape Cod Commission has adopted. There was general discussion regarding the timeline of the notice to the public and publishing the regs in the newspaper. Mr. Andrews stated that he would go over the regulations while Town Counsel was present. The first item is that *the Bourne Board of Health will require persons or businesses that want to operate a turbine that works or converts energy must obtain a permit from the BOH prior to construction. All of the permits must be obtained prior to a hearing before the BOH and a full vote of the Board is required for the permit. An application fee will be determined by the Board at the time of the application which will include, but not limited to, reasonable fees for the employment of outside consultants.* Mr. Wall suggested that the Board determining the fee is too much authority. A permit application fee has to be based upon the cost of the process and Mr. Wall believes that there should be a fee that is similar to other projects that they review or a schedule set ahead of time as to what is going to be involved. There is a state statute that enables Boards to require applicants to pay for peer review. Mr. Wall stated that he will work with Mr. Andrews to come up with some language. There is an application fee to start the hearing and in addition to that fee you can require the applicant to put money into a fund for peer review and that amount is based upon the type of review that is needed. Ms. Peterson stated that she was thinking that the fee could be similar to the site assignment they just did. Mr. Wall stated that the fee could be based on a formula with a standard that is going to be applied for. Mr. Andrews went on to read that *the permit will be nontransferable unless a*

vote of the BOH approves it. Under Mass General Law 111.122 the Bourne Board of Health has determined that a nuisance and/or an impairment of the public health and comfort would be created from the shadow flicker of a turbine and/or energy producing device. Mr. Wall stated that that will appear in the purpose and findings and that is exactly the kind of language that he was suggesting that would say there is a possible threat to public health. Mr. Wall stated that as far as an aggrieved person they will have to come up with a standard. *No variance shall be given to public ways, places of worship, schools, public buildings, playgrounds, hospitals, nursing or rest homes.* Mr. Wall stated that the sentence starts with no variances and you could say that variances from this regulation may be applied for under a certain section and then you could say however, no variances will be given to these special places. *Individual property owners that would be affected must grant approval with a legal binding document that must be recorded at the Registry of Deeds which the property sits. The deed must be marginally referenced.* Mr. Wall stated that they have to be careful here; if the project meets the Boards standards then presumably it would not adversely affect abutting property. If it is under the variance procedure they could say *if the project doesn't meet the standards a way that the project could proceed would be to get permission from the abutters.* Mr. Wall stated that he does not think they should make that an up front requirement that they have to have permission from the abutters because you are giving abutters veto power over a project. Mr. Andrews stated that he thought the intent was if it did not conform then it could achieve a variance but the variance would be property by property and it would have to be recorded. It would be binding so if that person sold the property it would stand. *At no time should the owner of the turbine or energy producing site whether by ownership or assignment allow vibration, sound, echo travel off their property.* Mr. Wall stated that if someone had an air conditioner in their window in a neighborhood someone could complain. You are holding a wind turbine to a standard greater than just a regular house. Ms. Peterson stated that, through her research, courts have granted wide discretion in the determination of what constitutes a nuisance and that is why she wrote it that way. Mr. Wall stated that what they are saying is that at the property line the sound has to be silent and there is a big difference between a nuisance which is a noise that is so offensive that it causes harm and then to nothing at all. Mr. Wall stated that he thinks the board has authority to regulate noise but it has to be at someone's standard. Mr. Andrews stated that the penalties would be put towards the end and would state *Owner or occupant is liable for a \$1000.00 penalty per day for every day he knowingly violates the order for the first offense. \$5.000 a day for the second offense and \$10,000 a day for the third and or possible revocation.* The fine for the violation would be instated from the day the order is issued. Ms. Coffin asked if the Board would have to give a certain time period for the violation to be corrected before the fines set in. Ms. Peterson stated that, like with everything else, they have an agreeable amount of time to fix something but if they don't you want the fines in place. Mr. Wall stated that there should be an order of procedure with an order to cease and desist and an order of correction. If the order to correct is then violated a fine would be issued. *Before issuance of a permit a catastrophic*

plan must be in place and a lien bond or insurance must be issued to the Town of Bourne for 2x the amount of monies required for installation. Ms. Peterson stated that it would have to be put into a special account but they do have the authority to ask for that. It would be for fund plan reviews but would be established under a special account which would be the same thing under Chapter 44 Section 53G that the policyholder would be the Town of Bourne should a catastrophic event take place. Mr. Wall asked why the Board wanted to regulate a catastrophic event of a wind turbine. Ms. Peterson stated that should a failure take place there should be a catastrophic plan in place with monies available. Mr. Andrews stated that there was an issue with the septic failure at Pocasset Mobile Home Park where there was no money set aside to clean anything up. The last license the Board issued to the Park included a condition that monies would be set aside for emergency pumping. Mr. Wall stated that that makes perfect sense and asked if the Board believes that a failed turbine is a threat to public health. The zoning board will have setbacks in place that are going to take into account this ice shedding and blade breaking issue. Mr. Andrews stated that they have talked about what affect a fire would have to public health. They are also concerned with the gear oil getting into the groundwater and the potential of a blade melting. Ms. Peterson stated that the problem she is having is all of it says it can't happen but it does happen. Mr. Wall stated that it has to be tied to the Board's jurisdiction. Mr. Andrews stated that the Board wants to have the ability to address an issue if the operator was unable to or refused to address it. Mr. Wall stated that he believes the Board should consider some language such as *before the issuance of a permit the catastrophic plan must be in place and a lien bond or insurance policy must be issued for 2x the amount of monies required for installation.* Mr. Wall stated that it should say *required to implement the plan.* The catastrophic plan should be part of the permit application. Mr. Wall stated that they should have a section for submittal requirements so the Board can review it appropriately. Mr. Wall stated that if the bond requirement is tied directly to whatever the specific catastrophic plan is it can then be tied to the threat of harm. Mr. Andrews stated that a removal plan must be in place if there was a failure through the catastrophic plan. Ms. Peterson stated that in nuclear power plants and oil drilling they now have to have removal plans in place before their licenses are issued and with wind turbines there are no other plans in place to follow so 25 years in the future, if they have been abandoned, there has to be a plan in place because you don't know what will happen in the future. Mr. Wall stated that if a turbine goes up and for some reason it is abandoned it may be unsightly but it is just standing there. Mr. Andrews stated that there could be potential of petroleum products leaking from the turbine. Ms. Peterson stated that the batteries could be hazardous. Mr. Wall stated that he understands and had been thinking of more of a removal plan so basically if the turbine stopped being operational the Board would want the hazardous materials such as the batteries and the petroleum products removed but they are not saying that the turbine itself would have to be removed. Mr. Andrews went on with the regulations stating *The Bourne Board of Health requires each and every turbine or energy producing device to be fenced with a Knox box so emergency personnel have access should an emergency arise in training of town personnel*

the emergency shutdown of the device. Mr. Wall agreed. Mr. Lipman asked if the material drafted would be brought back to the Board and voted on as a regulation or would it be voted on as a proposed regulation and then have subsequent hearings. Mr. Wall stated that the Board has some discretion on this but since they are regulating an industry it would not be a bad idea to have comment on the actual regulations. Mr. Wall stated that there is a quantum leap between determining there is a problem and deciding to do something about it and then when you pick the standard you may get additional comment on whether it should be this way or that way. There was general discussion regarding the date to hold public comment. Mr. Wall stated that at the next meeting the Board should try to come to what it feels is an appropriate draft and then schedule a public meeting. Mr. Andrews stated that once the Board got to a final document they would vote to schedule a hearing on adoption of that and take comment. Ms. Peterson wondered if they could take comment in two weeks. Mr. Andrews stated that they would still be discussing that draft. Mr. Wall stated that they will not have a decision from the Board that the draft is final until that night. Ms. Peterson stated that they will plan on the meeting on May 25, 2011 for final review of draft regulations and on June 1st they could hold a special meeting for public comment and would discuss any revisions at the meeting on June 8th 2011. The Board agreed. Mr. Wall stated that he agreed with those dates. Mr. Sloniecki asked if there would be enough time to properly advertise the public hearing. Ms. Peterson stated that it would be put in the paper after the meeting on the 25th and the special meeting would be on June 1. Mr. Ingersol asked when the Board would make the proposed regulations public. Ms. Peterson stated that by May 27th the office should have copies for anyone who would like one. Mr. Sloniecki asked if the structure were deemed abandoned for whatever reason would that then fall upon the building inspector to take care of. Mr. Andrews stated that the Board of Health would only be concerned with the removal of hazardous materials. Mr. Wall stated that under the new bylaw that was adopted there is an abandonment provision that says that if the energy device is not used for a period of two years it is deemed abandoned and then the owner is required within 90 days to remove it. Ms. Peterson stated that they have also discussed a timeline for when the hazardous materials will have to be removed. The Board thanked Mr. Wall for his help.

2. **787 County Rd.-Robinson & Elizabeth Whitaker-Continued-**Requesting waiver to use the existing septic system for proposed renovations-Don Uitti will step off for this discussion as he is an abutter to the Whitaker's. Ms. Peterson stated that the green card issue was what caused the continuance. Mr. Whitaker stated that he has all the green cards this time. Mr. Whitaker stated that he is planning to put a 16x16 kitchen with a mudroom/farmers porch on the side of the house. The existing kitchen will be removed and turned into the dining room. Ms. Coffin stated that the system there now is 25 years old. Ms. Coffin stated that she does not see any problems as it is only a kitchen renovation. Mr. Andrews asked when the last inspection had been done. Ms. Peterson stated that she would move on to agenda item 3 while they were looking in the office for the Title V report.

Ms. Peterson reopened this discussion once the report was brought down from the office. Ms. Coffin stated that the inspection was August 21, 2003. The system passed that inspection. It is a tank and two flow diffusers. **Mr. Andrews made a motion to APPROVE the waiver for the use of the existing septic system for the proposed renovations for 787 County Rd. The drawing was received April 12, 2011. Ms. Tinkham seconded the motion. All in favor and the motion PASSES.**

3. **5 Middle Way-Barbara Frappier for John Keaney**-Requesting waiver to use the existing septic system for proposed renovations. Jack Landers Cauley is representing John Keaney. Mr. Landers-Cauley handed the nitrogen loading calcs to the Board. This property had an upgrade to the Title V system in 2010 which was red stamped. There is a new owner to the property that would like to make some modifications to the house. They are not increasing the number of bedrooms. They are increasing the bedroom area below the 25% recommended to about 21%. The gross floor area will not change over the exceeded level of 50%. That is about 24%. They are both noted in the plans. Mr. Andrews stated that it looks like they are utilizing the space over the garage to move a bedroom upstairs, bump out on the back side on the first floor, and closing in the area behind the garage. Mr. Landers-Cauley stated that he believes this plan is consistent with the Board of Health guidelines and even though they are not 150ft from the coastal bank the system that is in place is 115ft away from the top of coastal bank by definition to the SAS and is 152ft from the upper beach grass to the SAS. Mr. Landers-Cauley stated that they are over 100ft from the coastal bank and are over 150 ft from the wetlands. Mr. Landers-Cauley stated that the Town of Bourne has very strict standards and this is not an eroding bank. Short of a catastrophic storm he does not see this retreating. Ms. Coffin stated that it looks like the project is mostly all window and doors. Mr. Andrews asked about the outdoor shower. Mr. Landers-Cauley stated that it was an outdoor rinsing station. Ms. Coffin stated that generally what they require is a drywell for the shower that is at least 50ft from any resource so that it meets the standards for Title V. Mr. Landers-Cauley stated that he would modify the plan to show the drywell. **Mr. Andrews made a motion to APPROVE the waiver at 5 Middle Way for John Keaney for the use of the existing septic system for the proposed renovations on the architecturals that were received on April 26, 2011. Drawn on February 9, 2011. The site plan dated November 12, 2010 received by the Bourne Board of Health on April 26, 2011. The addition of the drywell for the outside rinsing station must be shown on the plan to conform to Board of Heath standards. Ms. Tinkham seconded the motion. All in favor and the motion PASSES.** Mr. Landers-Cauley stated that he would send over a new set of plans for the office.
4. **62 Old Plymouth Rd-Danielle Hernandez, Code Compliance**-Appealing fine imposed for noncompliance of housing codes-Mr. Uitti stepped back on at this time. Ms. Furtek stated that Ms. Hernandez could not attend the meeting as her office is in Texas. Mr. Andrews asked if they had a local representative. Ms.

Furtek stated that they did not have a specific representative locally. Ms. Furtek stated that everything is finished and the door looks amazing. Ms. Peterson stated that she is not happy with the tone that Ms. Hernandez took in the email she sent to Ms. Furtek. Ms. Peterson stated that they were given ample opportunity to correct the violations. Ms. Furtek stated that Ms. Hernandez did not know about the issue until January because the bank was first notified and after going through a law office in Boston and then the office in Texas she was put in touch with Ms. Hernandez. Mr. Andrews stated that they did not impose a fine until after multiple meetings were held. Ms. Furtek stated that they had already started repairs in January. The fines now are up to \$2400.00. Ms. Peterson stated that the amount of time the office has put into 62 Old Plymouth Rd. far outweighs \$2400. Mr. Andrews stated that the tenants were at every hearing and if the department had not been as active at pursuing the issue the violations would still be outstanding. Ms. Peterson suggested cutting the fine in half but not eliminate it. Ms. Coffin stated that at the time the fines were imposed the only things left to correct were the basement window and the door. The original inspection was October 29, 2010. Mr. Andrews stated that they never had any explanations as to why they were not making the repairs. Ms. Furtek stated that the door was on special order. The Board feels that someone should have come to the meetings to represent the bank. **Mr. Andrews made a motion to reduce the fine to \$1000.00. Mr. Utti seconded the motion. All in favor and the motion is APPROVED.** Ms. Coffin asked what would happen if they do not pay the fine. Mr. Andrews stated that it should be turned over to Town Counsel. Ms. Coffin stated that she would rather just file a complaint in court so it would not cost anything. Mr. Andrews agreed. Ms. Peterson stated that a formal letter go out to the bank with the amount of the fine and what it was reduced from and that they have 30 days to pay it.

5. **Pocasset Auto Service-810 MacArthur Blvd-James Champani**-Appealing fine imposed for selling tobacco and retail items without required licensing-Ms. Peterson stated that the only time the Board hears about problems is when someone ignores the office. The Board feels that it is not their place to get involved in the everyday licensing. Ms. Furtek stated that Mr. Champani called to let her know that he had taken all tobacco and retail off the shelves on April 27, 2011. She inspected and all the items had been removed. Mr. Andrews asked when the fines had been imposed. Ms. Coffin stated that it was at the meeting of April 25, 2011. Ms. Peterson stated that it is frustrating that it took imposing a fine for Mr. Champani to take the items off the shelves. Other people have to follow the rules and obtain the proper licensing. Ms. Coffin stated that she is concerned that in 2009 the office was notified that he was no longer selling tobacco or retail and at some point that changed without him notifying anyone. Mr. Champani stated that he does not recall telling anyone that he was not selling tobacco. Ms. Coffin stated that there is a note in the file and she does not want to go by there and see that he is selling tobacco again. Mr. Champani stated that he will come in for a license before he does anything. Mr. Champani stated that he had applied for a DOR license but never received it. Ms. Peterson stated that if Mr. Champani gets caught selling tobacco without a license again it will be

double the fine. She is willing to waive this fine because he has taken everything off the shelves. **Mr. Andrews made a motion to waive the existing fine but this will be considered a first offense and the next offense will be his second offense. Mr. Uitti seconded the motion. All in favor and the motion is APPROVED.**

- 6. Approval of Minutes dated April 6, 2011 & April 13, 2011-Ms. Peterson made a motion to APPROVE the minutes dated April 6, 2011. Mr. Uitti seconded the motion. All in favor and the motion PASSES. Mr. Andrews made a motion to APPROVE the minutes dated April 13, 2011. Mr. Uitti seconded the motion. All in favor and the motion PASSES.**
- 7. New Business-**Ms. Coffin stated that she wanted to congratulate Ms. Furtek on working with Rich Sylvestro and the Police Dept in organizing a drug take back day on April 30, 2011. They collected 80 lbs. of medications. Ms. Coffin asked if the Board wanted a final vote on the list they had given Ms. Furtek of what they would like to prepare at Deb's Veggie Depot. Ms. Peterson stated that she will leave it in Ms. Furtek's hands but no fish and no raw bar. She does not believe they are equipped to hold the fish right now. Ms. Coffin stated that the DPH has been looking into the fish markets and Ms. Furtek is checking to see where some of the places are getting their lobster meat to make sure it is coming from a licensed facility. Ms. Furtek and Mr. Hickey, DPH, will go out this week to inspect places they feel may not be following the proper procedures. Ms. Peterson asked if Deb's Veggie Depot had shown Ms. Furtek the invoices from the food she has purchased. Ms. Furtek stated that she looked at the bills to verify the items purchased. All labels with ingredients listed have to be shown on any packaging of sales. Mr. Andrews stated there is a link to the FDA which lists all the regulations on what you have to do in order to wholesale. Ms. Peterson asked if there had been any reports on measles. There has not been.

Mr. Andrews made a motion to ADJOURN. Mr. Uitti seconded the motion. All in favor and the motion PASSES. The meeting was adjourned at 8:50 P.M. The next meeting is scheduled for May 25, 2011

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_____

Don Utti_____

Carol Tinkham_____

cc Board of Selectmen/Town Clerk