

Terri A. Guarino  
Health Agent

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# TOWN OF BOURNE BOARD OF HEALTH

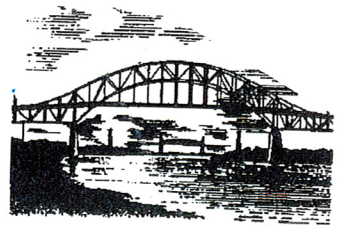
24 Perry Avenue

Buzzards Bay, MA 02532

[www.townofbourne.com/health](http://www.townofbourne.com/health)

Phone (508) 759-0600 ext. 1513

Fax (508) 759-0679



## MINUTES

August 21, 2019

Members in attendance: Kathleen Peterson, Chairperson; Stanley Andrews, Vice Chairperson; Galon Barlow Jr.; Donald Utti; and Kelly Mastria.

Support Staff in attendance: Terri Guarino, Health Agent; Kayla Davis, Heath Inspector; Carly Cote, Health Inspector; Syreeta Amaral, Administrative Assistant.

### Meeting was called to order at 6:02 pm

*Ms. Peterson asked if anyone was recording at this time, Michael Rausch and Beth Treffeisen acknowledged they were recording.*

- 1. Discussion and possible vote on update regarding failed Savary Avenue Community Septic Disposal System.** Chairwoman Peterson stated that she would like to bring the Board up to speed as to the status of this project. Ms. Peterson emphasized all of the hours and meetings which have taken place in regards to this agenda item. Specifically, Ms. Peterson detailed the requests of 4 legal services, only one of which was partially answered. The initial legal services request from October 29, 2018 was to discuss the upgrade of shared septic system owned/ operated by the Town of Bourne at Savary Avenue. The Board indicated that the review process should be started immediately, pending outstanding issues, as there was a tentative meeting date of November 14, 2018 to approve the variances and plans. Ms. Peterson suggested she would like a vote from the Board to clarify that the Health Agent cannot draw up these documents as she is the regulatory authority for this project. She noted, that in this instance, the Town of Bourne and Board of Sewer Commissioners is the applicant, and the Board of Health and its Agent is the approving authority. Ms. Peterson stated that it is not clear why this project has been held up so long, but the most recent legal services request was for special counsel. Attorney Troy is representing the applicants therefore separate counsel for the Board of Health is necessary. Mr. Andrews asked about timeframes for upgrades. Health Agent, Terri Guarino described for Title 5 overflows the timeline is typically one year, in no case more than two years from the date of determination. For cesspools overflowing, usually only 30 days are provided for the upgrade to be completed. Mr. Barlow said that all Boards need to work together and follow the correct procedures. Mrs. Mastria clarified that the Town does currently own the system. Ms. Peterson added that the Board of Health has demonstrated that they are willing and eager to work with the Board of Sewer Commissioners, but is concerned that the project is not moving forward. Mr. Andrews said that they have seen some progress in the past 10 months or so, but we don't have finalization. He stated that it is a concern that the owner of the failed system was not given a specific timeline for completion of this and thinks a vote is appropriate. Ms. Peterson is not sure how to proceed without special counsel, and would like to address a timeline for this project. Mrs. Mastria suggested that they should be provided with a legal opinion that explains as to why special counsel is premature. The concept that special counsel is premature was previously expressed for some Board Members. Mr. Glenn Cannon, Assistant Town Administrator, agrees that there should be a timeline established for the project to be completed. The applicants are aware and agree with the role of the Health Agent in this project and will have counsel prepare the deed recordings. Mr. Cannon explained that Attorney

Bob Troy as Town Counsel can address the questions of the Board of Health and relay appropriate information. Mr. Andrews related this situation to special counsel provided for the Board of Health when the Landfill is the applicant for site assignment modifications. He asked why these legal services requests were not addressed. Mr. Cannon was uncertain. Mr. Andrews asked for the Health Agent for a recommendation for a timeframe, stating that this is a unique situation where it is a municipal entity and a shared system. Mr. Andrews went through procurement procedures and feels that this septic system upgrade could be completed by February 6, 2020. Ms. Peterson thinks that is too long. **Mr. Andrews made a motion that the Board of Health set a deadline for the septic system upgrade to be completed by February 6, 2020.** Mr. Barlow made a motion that we end this discussion and move to second agenda item to allow the engineer and applicant to present. Ms. Peterson would like to see a vote relative to special counsel. Mrs. Mastria understands the level of frustration and thinks it's fair for the Board of Health to have legal advice to determine what the Board needs. There are two motions on the table which have not been seconded. Miss Guarino clarified the agenda items. Mr. Cannon added that the Board of Selectmen need to vote to approve special counsel and that has not been done. Mr. Gary Maloney spoke from the audience saying that the delay of this project directly affects families. He explained, "13 families are getting raked through the coals and the Board of Health Agent is in a bad position." **Mr. Andrews added an amendment to the motion include that the Board of Health request to be assigned special legal counsel for the review of this project.** Mrs. Mastria seconded the motion. **All in favor, and the motion passed unanimously.** Miss Guarino asked for clarification. Ms. Peterson said that they are hoping to protect the rights of the residents. Mr. Cannon said that the residents were told to get their own legal representation. Mr. Maloney disagreed with that statement in that both messages were stated by them. Mrs. Mastria said she is concerned of the health and welfare of the public. Mr. Brian Cleary was given a preliminary document to give to their lawyer, but was then told it was invalid and he hasn't received anything final since then. Mr. Peter Valeri said that on Day 1 that himself, the Health Agent, DPW, and Bracken Engineering were there when the system was overflowing and the technical issues were addressed. Mr. Valeri went on to say, "it's more of an Administration issue, and if Town Counsel isn't doing what they are supposed to, hire someone else. Taxpayer dollars are flying out the window and this has been stalled by Administration". Mary Jane Mastrangelo, speaking as a Bourne resident, thinks having a deadline is good to move forward, and asked if the applicants have a list of what they need to provide within that 45 day period, which Ms. Peterson answered that they do. Ms. Mastrangeo added that Conflict of interest has been previously raised for an attorney representing a Town and the County and thinks it is clear that the Board of Health should have separate representation.

Ms. Peterson turned the meeting over to Mr. Stanley Andrews and stated that she needed to leave shortly.

2. **Savary Avenue Community Disposal System– Zachary L. Basinski P.E of Bracken Engineering on behalf of the Town of Bourne–Continued from July 24, 2019– Request for relief from Bourne Board of Health Regulations and Title 5 of the State Environmental Code for the upgrade of the community sewage disposal system off Savary Avenue.** System is owned and operated by the Town of Bourne. Mr. Basinski said the applicants may be willing to waive the 45 day time period. Mr. Andrews said they want this to move forward and not extend beyond the stated timeline. There was clarification on whether the legal counsel is aware of the Title 5 documents and that after it is approved, they have to record and file with the Board of Health the executed documents within 30 days. Mr. Cannon said that the applicant recognizes that 30 day time period and intends to discuss with the residents. The Board of Health thanked Mr. Basinski. Mr. Cannon thanked the Board of Health for their patience and dedication. *Ms. Peterson exited the meeting and did not participate in the vote. Four members present.* **Mr. Barlow made a motion to continue this item to the Board's next meeting. Mr. Uitti seconded the motion, all in favor, and the motion passed unanimously.** Mr. Barlow added that this packet will not be able to be reviewed and approved if the request for legal counsel, which they are entitled to, is not approved and granted prior.

3. **141 Williams Avenue—Owner Paula Hoffman—Continued from July 24, 2019—Discussion and possible vote regarding failure to correct violations of the State Sanitary Code, 105 CMR 410.000, and noncompliance with the orders dated April 18, 2019, and June 12, 2019.** Health Inspector, Kayla Davis, debriefed the Board members. She stated that she had not heard from the owner nor the owner's attorney since July 26, 2019 and that violations were still outstanding. Mr. Andrews asked about the fines. Miss Davis stated that the fines have totaled \$37,800 to date and are ongoing. There was no public comment. **Mr. Barlow made a motion to continue the fines until the work at 141 Williams is completed. Mr. Uitti seconded the motion. All were in favor and the motion passed unanimously.**
4. **58 Wings Neck Rd – Zachary Basinski P.E. of Bracken Engineering Inc. on behalf of homeowner Donald Rhodes—** Owner is requesting variances to the Town of Bourne Board of Health Regulations and system upgrade approval pursuant to 310 CMR 15.403 through 15.405 State Environmental code. Requested variances include reduction of setbacks to abutting properties, cellar walls, and Tidal Marsh areas. Mr. Basinski reported that the requested relief of setbacks and approval of the impervious barrier for the system to go up against the foundation are due to the size of the lot. Mr. Andrews questioned the practice of installing the barrier against the foundation. Mr. Basinski replied that he agrees that it is not the best practice but as long as the impervious barrier is deeper than the footing that it would be okay. Health Agent, Terri Guarino added that the groundwater elevation provided on the plans was confirmed with monitoring well data. **Mr. Barlow made a motion to approve the variances. Mrs. Mastria seconded the motion. All were in favor and the motion passed unanimously.**
5. **284 Scraggy Neck Rd – Zachary Basinski P.E. of Bracken Engineering Inc. on behalf of homeowners John and Suzanne Ball -** Owner is requesting variances to the Town of Bourne Board of Health Regulations and system upgrade approval pursuant to 310 CMR 15.403 through 15.405 State Environmental code. Requested variances include divergence from full compliance for a finished grade of 4.4 over a septic component and setback requirements to a non-eroding, non-water dependent coastal bank from a soil absorption system. Mr. Basinski remarked that the owners were upgrading the septic because they wanted to add an addition. This addition has already been approved by Conservation. They are going to install a new Microfast system on the property. Mr. Andrews remarked that he wanted to make sure that the installer followed the notes on the plans to install a sleeve on the water main. After being assured this would be followed and the proper testing would be completed, Mr. Andrews asked if there were any from either the Board or from Miss Guarino. There were no questions asked. **Mr. Barlow made a motion to approve the variances. Mr. Uitti seconded the motion. All were in favor and the motion passed unanimously.**
6. **39 Lathrop Rd – Owner Mark Dalessandro – Discussion and possible vote regarding a request for relief from the Bourne Board of Health Poultry regulations for the continued domicile of six poultry and setback distances for chicken coops.** Owners described their situation and the relief they are requesting. Health Inspector, Carly Cote, added that the existing chicken coop is not 100 feet from the dwelling on the property and there are a number of hens. The Health Department was notified after receiving a noise complaint about a rooster, which the owners removed. Mr. Andrews asked if there was anyone here in the audience, to which the neighbors were present, but did not want to comment until he heard from the Board. Mr. Barlow said that they have granted variances in the past if everyone is on the same page. Mrs. Mastria asked what size the property is as the regulations state only four hens per acre and asked for clarification on the existing fence. The property is 7,362 square feet according to the records of the Assessor's database. Mr. Jake Collins of 2 Nuovo Drive, Sagamore Beach is concerned about the environment as it relates to his wife's health and to his registered well. He asked that the Board of Health enforce the setback regulations and not grant the variances. **Mrs. Mastria motioned to have this item continued to the next Board of Health meeting so that more information on exact setbacks can be attained. Mr. Uitti seconded the motion. All were in favor and the motion passed unanimously.**



7. **Carmen Shay—Repair of septic system components at 7 Edith Avenue without disposal works construction permit.** Health Agent Terri Guarino advised the Board on the situation on 7 Edith Ave. She described that the residence at 7 Edith Ave had septic back-up issues inside the dwelling and that there was an unpermitted repair done by Carmen Shay. The repair was made by boring a hole into the tank to lower the outlet invert because inlet and the outlet pipes were at too similar of an elevation causing the back-up. Miss Guarino said that if the proper procedure had been followed she would not have allowed this repair to be made because it reduces the effectiveness of the system. According to Mr. Shay when he pulled the permit, the repair was not made as a permanent solution but as a temporary patch until the real repair can be made. Mr. Andrews asked if Mr. Shay had been notified that he was supposed to be heard at the meeting. Miss Guarino noted that there has been messages left on his machine and that he has not called back. Mr. Andrews remarked that he has in the past been an advocate for revoking an installer's license due to not pulling a permit before repairs are made because it allows other installers to do the same thing. **Mr. Barlow motioned to have Mr. Shay's license revoked until he shows up to be heard in front of the Board. Mr. Uitti seconded the motion. All were in favor and the motion passed unanimously.** Miss Guarino remarked that the issue can be resolved if the tank is replaced because the repair that was made has reduced the efficiency of the disposal system. Mr. Andrews asked for an acceptable amount of time that was needed for proper permitting, work completion, and inspection. Miss Guarino replied that since the system is not functioning properly as it is that she would advise 7 days. Mr. Andrews stated that he can see giving the homeowners 14 days max. **Mr. Uitti made a motion to give the owners 14 days to come up to code and get approval from Miss Guarino. Mr. Barlow seconded the motion. All were in favor and the motion passed unanimously.**

8. **Approve the Minutes— Approve the minutes from the previous meeting July 24, 2019 and August 5, 2019. Mr. Barlow made a motion to approve the minutes for the previous meetings. Mr. Uitti seconded the motion. All were in favor and the motion passed unanimously.**

9. **Set tentative date for next meeting and adjourn. September 11, 20019 at 6:00 pm**

Taped & Typed by Terri Guarino, Health Agent

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

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

Galon Barlow Jr. \_\_\_\_\_

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

Kelly Mastria  \_\_\_\_\_