

TOWN OF BOURNE BOARD OF HEALTH

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Terri Guarino
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TOWN CLERK BOURNE

MINUTES April 13, 2016

Members in attendance: Kathy Peterson, Chairman; Don Uitti, Secretary and Galon Barlow

Support Staff in attendance: Terri Guarino, Health Agent and Jamie Butler, Health Inspector and Lisa Collett, Secretary

MEETING WAS CALLED TO ORDER AT 6:23pm

- 1. 6:00pm – Discussion and possible vote to amend the Board of Health Tobacco Regulations pursuant to Massachusetts General Laws c. 111 s.31 to describe penalties for subsequent violations and the usage of may/shall.** – Ms. Peterson stated that while this is being discussed, the people in the audience that are present for the next item will hear the board's intentions on violations. The board wants to make ~~with~~ very clear what the penalties will be for any future violations. Ms. Peterson stated that the regulations had some discrepancies. There is a problem with the words May or Shall. This board is never been one to say that anything will be absolute. The board tries to work with people. Ms. Peterson stated that the words may/shall will be added to the regulations. The fine will remain the same provided they are voted on this evening. The fine shall be \$300.00 for each violation. **Mr. Barlow made a motion in the Tobacco Regulation pursuant to Mass General Laws Chapter 111.6 s31 to change the wording that states SHALL lose their license to MAY/SHALL lose their license which gives the board the option to not suspend a license. Ms. Peterson added that an age recognition device may be required if there are continuous violations. If the board chooses to revoke a license, it can be up to 14 days. Mr. Uitti seconded the motion. It was unanimous.** Ms. Guarino stated that the time frames for those license suspensions that might have been questionable. May be there was an error here. Ms. Guarino stated that in the 2012 regulation it had 7 days for the second offense and 30 days for subsequent violations. Ms. Guarino stated that the regulation that was modified in January 2016 lists 14 consecutive days. Ms. Peterson stated that she would like to **add to the motion the words up to 14 consecutive days should the board decide to revoke a tobacco license. It is also be applied to the second option which will read for up to.** Ms. Peterson stated that this does not mean that the board is taking away their ability by any stretch. It will allow a merchant to be able to come to a hearing and plead the case. Mr. Barlow

stated that in the past, the board has had a lot of tobacco cases where someone sold cigarettes to a minor but was not actually an employee of the store. That really does happen and the board would not like to put blame on the store owner if he wasn't aware that a non-employee sold cigarettes. Mr. Barlow stated that there are different circumstances for everyone and each is site specific. Gary Bourne was present for this meeting. Mr. Bourne asked what the correct policy right now with regards to the State of Massachusetts inspections in order to obtain a tobacco license. Ms. Peterson stated that this will be discussed at a later time during this meeting. Ms. Peterson asked if anyone had any other discussion. Ms. Guarino stated that to maybe put the age increase to 21 back on the agenda sometime in the fall. **Mr. Uitti seconded the motion. It was unanimous.** Ms. Peterson stated that these are the changes she would like to see on the tobacco regulations. They must be published in the newspaper before they become effective. Ms. Peterson stated that she would also like to draft a letter to Mr. Collett, the Tobacco Control Director for Barnstable County, asking him to go back around after he has made his tobacco stings, and notify the manager on duty that they failed the sting. This is something Mr. Collett would have to decide whether he would do this or not. As far as what will happen in the office, it will be discussed in the office not at a general public meeting. Mr. Bourne asked if it would be possible for Mr. Collett to inform store managers when they are successful. Ms. Peterson stated that he can't speak for Mr. Collett but she feels that would be encumber some on Mr. Collett because he wouldn't be able to go into one store telling them they failed then another that they passed. Mr. Bourne stated that he understands that but even the next day have Mr. Collett inform those who passed that they passed. Mr. Barlow stated that Mr. Collett is a Barnstable County employee. What he does is consistent within all towns in Barnstable County. This board does not have any oversight with Mr. Collett at all. Ms. Peterson stated that what works very well is that there are no stores listed in the newspaper for failing tobacco stings. As Mr. Collett stated before, if you fail once, the county has the ability to go back to that store as many times as they want. It used to be each store would get visited twice per year but now it is as many times as they want. Mr. Bourne stated that as a store owner, he does not have any issues with that. Mr. Bourne stated that he did end up in the newspaper and rightly so because his store did fail the sting but he did not receive any notification beforehand, just what was printed in the newspaper. As a result, he missed the meeting that he was supposed to attend. It would be handy to be told when they fail but also when they succeed. It would be good to be able to reward our employees for doing a good job and abiding by the law. Ms. Peterson stated that the office did try to contact him but received no call back. When a store applies for a license, it is required to give a contact number. It is going to be the responsibility of the store owners to inform the office of any new employees or managers along with correct contact information. Ms. Peterson stated that by the way this discussion is going, the tobacco licenses will not be revoked at this time. The next time anyone of these store owners are requested to come to a board meeting it will be because of third offense. Once you get up to a third offense, it is going to be very difficult for the board to not take serious action. Because of some discrepancies within the regulation, the board felt it would unfair to revoke

any license. Ms. Peterson stated that she will take all comments under advisement and draft a letter to Mr. Collett. Mr. Bourne stated that he would be willing to pay a fee to Barnstable County just to be told he was successful during a tobacco sting even if it is a week later. Mr. Barlow stated that this request is way beyond the scope of the Board of Health and can't really get involved but Mr. Bourne could call Mr. Collett and have this requested. Ms. Peterson stated that she really just wants people to hear that if you fail once, you can be stung every week. It's important that the store owners are aware. Ms. Guarino stated that at a prior meeting, the ban of blunt wraps that was voted upon, this might be a good time to remind store owners of that new regulation. Ms. Peterson stated that blunt wraps are no longer allowed to be sold within the town of Bourne as of mid-June 2016.

- 2. Tobacco Violations dated February 21, 2016 – CONTINUED from March 9, 2016 – Discussion and possible vote to invoke a penalty for repeat offenders within an 18 month period.** – As discussed in item number 1, the board informed these store owners of the importance of following the Tobacco Regulations. The fines have all been paid. The board will waive the revocation to licensure at this time.

- a. Cape Cod Filling Station – 156 Main St – 2nd offense within 18 months
- b. Cumberland Farms #2298 – 435 Shore Rd – 2nd offense within 18 months
- c. Gray Gables Market – 181-183 Shore Rd – 2nd offense within 18 months
- d. Sam's Food Store – 261 Main St – 2nd offense within 18 months
- e. Shell Food Mart – 282 Main St – 3rd offense within 18 months

No action was taken as this time.

- 3. 7:03pm – 10 Harbor Way/Zero Lighthouse Lane – CONTINUED from March 23, 2016 – Zachary Basinski of Bracken Engineering for Elizabeth Warden – Discussion and possible vote to approve a Nitrogen Loading Facility Aggregation Plan in accordance with §310 CMR 15.216 of the State of Environmental Code, Title 5 and a variance request from the 150' setback of a water resource area for the propose construction of a single family dwelling.** – Ms. Peterson stated that the board will begin discussion, then the presentation from Mr. Basinski, then comments from the public. Mr. Basinski submitted the additional information regarding easements as the board instructed. Mr. Basinski gave a brief description of the proposed project at 10 harbor Way/Zero Lighthouse Lane. Ms. Peterson stated that she did send questions to town council, Robert Troy but feels her questions were not answered yet. Ms. Peterson stated that she did send another letter to Mr. Troy but again he never said whether he approved them or not. Ms. Guarino stated that the documents that are here tonight do have the changes in them. Ms. Guarino stated that council did review the questions and has approved the plan as proposed. Ms. Guarino stated that the owner is aware of these conditions that are in place and these documents so the project is ok to move forward. Mr. Barlow asked what the intended use of the property will be. Mr. Basinski stated that the property will remain in its natural state. The floor was opened to the public. Mr. Budryk addressed the board with questions regarding a variance that may get granted on a

merged parcel of land. Mr. Budryk stated that for one, the property has already been merged according to several departments at Town Hall so how can an easement and or a variance be granted on something that even though it's stated at 0 Lighthouse Lane has already merged from 2 lots into one according to the town register. The second thing is by virtue of the fact that they did merge, the nitrogen loading calculations would be way off. These are very important issues. Ms. Peterson stated that this all has to do with zoning. When dealing with Title 5 and septic, if everything meets what the conditions are it is really difficult to deny a project. If the plan being proposed meets all the Title 5 requirement, then the board must approve the variance request with conditions. Ms. Peterson suggested Mr. Budryk appeal to the Zoning Board of Appeals. Mr. Budryk stated that another issue is the 12000 sq ft for the leaching fields and there was going to be a deed restriction on that and that was not taken into consideration as far as he knows. Mr. Basinski stated that the sq footage of the leaching is not included in the land separation. The land that the house is built on is what was being considered. Mr. Basinski stated that the nitrogen loading calculations are correct. Mr. Budryk stated that he strongly objects to the board approving this variance because of the land already being merged as one property so the nitrogen calculations are not correct. Mr. Barlow stated that the board has already looked at this project very closely and must remain consistent. The project does meet all the requirements for the Board of Health. Zoning is another issue that must be taken up with that board. Ms. Peterson stated that decisions that a board makes in the past may not be the same decisions today. This project meets the requirement and this board could be in a lot of trouble if they decide not to approve it as presented. Mr. Barlow stated that this does preclude Mr. Budryk from appealing at another boards' approval. Mr. Budryk stated that the Conservation Commission stated almost the same thing. Even if the project gets approved by the Conservation Commission, it will still need to go before the Board of Health. The Board of Health is the governing body. Mr. Budryk stated that now the Board of Health is saying that he has the option of going to another board. Ms. Peterson stated that Mr. Budryk went through the appeals process on another project and won so who's to say that won't happen again on this project. Just remember that this is a totally different project. Mr. Barlow stated that the Board of Health is not approving the project, they are just approving the septic system portion of the project. Mr. Barlow stated that Mr. Budryk has some great ideas and valid concerns but they do not involve the Board of Health. Ms. Rose Marie Flannigan Cronin questioned the proximity of the new system. She wasn't aware that two systems could be so close to each other. Mr. Basinski told her they only need to be 10 feet apart. Ms. Flannigan-Cronin stated that her concerns are noise etc. because the system is going in close to where her bedroom window is located. Mr. Basinski assured her the system is quiet. Mr. Tim Cronin had a concern regarding trees and tree roots. Mr. Basinski stated that the trees will be cut down and removed. The roots will not interfere with the system. Ms. Peterson asked that a letter be drawn up by Mr. Basinski to that effect and submit it to the Board of Health office. Mr. Basinski stated that he would and he is on the record as saying so. **Mr. Barlow made a motion to approve the variance request at 10 Harbor Way/0 Lighthouse Lane for a 3 bedroom single family dwelling**

on 10 Harbor way. Reduction in setback distance from the proposed soil absorption system to a non-eroding coastal bank from 150 feet to 105 feet which is a 45 foot waiver and a reduction in the setback distance from the proposed soil absorption system to approximate mean high water of Buzzard Bay from 150 feet to 145 feet which is a 5 foot waiver. For the record the board does give variances of up to 75 feet so this is just a minimal variance. Mr. Barlow wants to specify these items to be recorded against the following identified lots. 10 Harbor Way – a notice of Alternative Sewage Disposal System with a grant of a Title 5 nitrogen loading restriction easement on facility land 0 Lighthouse Lane granted Title 5 nitrogen loading restriction on nitrogen loading easement on nitrogen credit land. Septic easement and benefit of 10 Harbor Way, Bourne and 0 Lighthouse Lane a 10 foot wide septic course made easement for the benefit of 10 Harbor Way, Bourne. This section of land with the septic system and the property at which it services will be tied together in perpetuity. Mr. Uitti seconded the motion. It was unanimous. Ms. Peterson stated that she really appreciates the concerns brought up at this meeting and she does understand the frustration but there are other avenues the parties concerned can go through to try to appeal the project.

4. **61 MARYLAND AVE – CONTINUED from March 23, 2016 - Mark Tuleja of MTI Home Designs for Mark Peretti – Request waiver to use the existing system for renovations, additions and/or alterations – Discuss and possible vote** – Ms. Guarino stated that updated plans have been submitted to the board. These plans will replace the plans that are in the packets dated April 18, 2016 distributed to the members of the board. Ms. Peterson requested that Mr. Tuleja update Mr. Uitti on the project being proposed. Mr. Tuleja describes the project stating he is adding 2 dormers to the existing dwelling for a project that he has already been permitted for with the building department. For some reason the building application never went through the Board of Health. There was a red stamp restriction on the existing septic permit. At the last meeting is was discussed that Ms. Guarino would go out to the property and do a Title 5 inspection. Mr. Tuleja stated that a licensed Title 5 inspector was at the property and did a total inspection while Ms. Guarino witnessed. Since then, Mr. Tuleja stated that he revised the square footages for bedroom and non-bedroom space with the increases. Ms. Guarino stated that the percentage of increase worksheet dated April 6, 2016 is not correct based on what was given. New drawings were just submitted this evening with new figures on them. Mr. Tuleja stated that he measured the entire dwelling and submitted the new numbers. The project is already completed. Mr. Barlow stated he wanted to hear from Ms. Guarino about how she felt after looking at the project and the septic system. Ms. Guarino stated that she looked at the system twice and the system is operating properly with no evidence of failure. Ms. Guarino stated that they were unable to locate the inspection ports for the leaching but used a camera which she was able to get some measurements from the distribution box and it was right at the 150 feet. A rough estimate is to subtract at least 15 feet from that which indicates this is not much of a variance there just to

put it into perspective. Ms. Guarino is comfortable with the septic system and board's approval for this project which has already been completed. Mr. Barlow stated that for the board to approve a variance in which the system is already in it something new to the board. Mr. Barlow stated that board can either take no action and just everything sit or something else because he really does not know how to approve this. Ms. Peterson stated that she agrees with Mr. Barlow in principal. Mr. Tuleja stated that he had to go through many other boards to get his approval to build and does not know how this missed the Board of Health approval. Ms. Peterson stated that if the board decides to take no action, then there will not be anything recorded at the registry of deeds. Mr. Barlow agreed. Ms. Peterson stated that Mr. Tuleja as the builder should have questioned why the Board of Health never signed off on the building permit. Mr. Tuleja stated that he never even considered it nor was he ever approached. Ms. Guarino stated that it would be fair to restrict the dwelling to 3 bedrooms which is what the system is designed for as a conventional Title 5 septic system. Also make sure the owners agree to maintain the system regularly and if any other additions or renovations are proposed that they must come before the Board of Health. **Ms. Peterson made a motion to approve 61 Maryland Ave as it is with a deed restriction of 3 bedrooms to be recorded and that the owners are aware of any maintenance that needs to be done on this system. Mr. Uitti seconded the motion. It was unanimous.**

5. **29 CAPTAINS ROW – Zachary Basinski of Bracken Engineering for Thomas Tracey and Cheryl Clifton – Request waiver to use the existing septic system for proposed addition – Discussion and possible vote.** – Mr. Basinski stated that this is an 8000 sq ft lot out on Mashnee Island. The existing house is a single story 3 bedroom house serviced by a 1000 gallon septic tank with a with a 1000 gallon leach pit. These were installed in 1996. The owners purchased this property in 2014 and at that time received a passing Title 5 inspection report. The resource area on the lot is known as Buzzards Bay which is over 181 feet from the existing septic system. There is a non-eroding coastal bank which is 119 feet from the existing septic system. The owners would like to add a second story master bedroom onto the top of the house and relocate one of the existing bedrooms on the first floor to the second floor. The project won't increase bedrooms on the lot. Floor plans have been submitted with a bedroom increase of 470 sq feet which is approximately a 41 percent increase in bedroom space. Ms. Guarino stated that the only issue with her is that the reserve area will have to be located right at the existing system. Everything else looks good. Ms. Guarino stated that she and Mr. Basinski already discussed this project back in February 2016. **Mr. Barlow made a motion to approve the waiver request at 29 Captains Row. The existing soil absorption system does not meet the 150 foot setback to a non-eroding coastal bank of 119 feet which is a 31 foot waiver. There will be a 3 bedroom deed restriction recorded at the Registry of Deeds in Barnstable before any more work commences. Mr. Uitti seconded the motion. It was unanimous.**

6. **Plastic Bag Regulation – Requested by Board of Selectmen Chairman, Stephen Mealy – Discussion and possible vote to ban the use and**

distribution of plastic bags from retail establishments including restaurants.

– Ms. Peterson stated that earlier in the year, she received a memo from Stephen Mealy, one of the goals for the Board of Selectmen is a presentation of a new town bylaw controlling plastic bags similar by those adopted by other Cape towns. Mr. Mealy was selected to be the liaison for this goal by the Board of Selectmen. Mr. Mealy is looking for a member of the Board of Health to work with them and the recycling committee to put together a suitable approach to the town. Ms. Peterson stated that this issue is not a public health issue that would involve the Board of Health at this time. One reason is Falmouth adopted this bylaw and they have no idea how to have it enforced. Ms. Peterson feels this would be impossible to police because there is already a landfill in town. Since the first memo from Mr. Mealy, Ms. Peterson received another memo from Mr. Mealy asking that this issue be removed from the agenda this evening. In the memo, Mr. Mealy asked that his letter get read into the minutes. Ms. Peterson did not have a copy in front of her to read verbatim but stated that Mr. Mealy is asking that this be removed from the agenda because the Board of Selectmen are not ready for this to be discussed with the Board of Health. Ms. Peterson stated that she wanted this item to remain and discuss in case there is someone on the board that may want to be involved should a committee be organized. Ms. Peterson feels this issue would not be able to be policed consistently with the Health office and would rather it not become a Board of Health regulation. Mr. Barlow stated that he agreed with Ms. Peterson and if the Board did decide to have a plastic bag regulation it would have a huge impact on the department. Mr. Barlow stated that the board can ask the retailers of the town to try to use paper instead of plastic but to enforce a plastic bag ban is nearly impossible. Ms. Peterson stated that something of this scope is beyond any town taking over. With the landfill in town taking trash from other communities will make it that much more difficult to enforce. Ms. Peterson stated that she recalls when there was a huge public outcry to stop using paper bags and switch to plastic to help save trees which the town did comply but still everyone uses both paper and plastic to this day. Ms. Peterson stated she just wanted this out for discussion amongst the board. Mr. Barlow stated that should they decide to come up with something, it would have to go to town meeting and be voted on by the citizens of the town. **No action was taken at this time.**

7. Good Fellas Smoke Shop – 270 Main Street, Buzzards Bay –

Discussion and possible vote to issue fines and or/suspend, revoke, or modify license to sell Tobacco Products due to operation without a Tobacco Sales Permit from January 1, 2016 to April 5, 2016.

– Mr. Steve Cardillo was present for this hearing. Ms. Peterson stated that she is surprised to see this on the agenda and that he has been operating without a license for 83 days. When Ms. Butler visited the shop in January, she was told the shop was closing. Ms. Peterson asked after deciding to remain open, why didn't the owner go to the office and apply for the license then. Mr. Cardillo stated that this was no intentional at all, he just simply forgot. Ms. Peterson stated that the board can fine \$300.00 per day for not having a license so at 83 days the board can fine him \$24,000.00 and would like an explanation of why the board should not go through with that fine. The

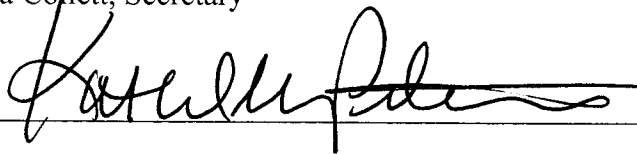
board is actively taking fines from establishments for selling to minors yet he is operating without a valid license at all. Mr. Cardillo stated that he is completely at fault for this and knows that he will need to pay a fine but at \$300.00 per day that would put him out of business. Mr. Cardillo stated that he hopes the board will forgive him and come up with another amount to be paid as a fine without putting him out of business. Ms. Guarino stated the state minimum is \$10.00 per day which would come to \$830.00. Ms. Peterson stated that she has a problem with giving Mr. Cardillo the same consideration as they did for a store failing a smoking sting. It is a serious offence to operate a tobacco business without a license. Mr. Cardillo stated that he agrees with Ms. Peterson. Mr. Cardillo stated that he is young and irresponsible but is learning the hard way on how to operate a successful business responsibly. He is asking for the boards understanding on that statement. Ms. Guarino stated that the office makes renewing a license pretty easy. The applications are mailed out in November for a December 31 expiration date. All that is required is a signature, the payment and any corrections or additions to the application from the previous year. Ms. Peterson stated that at the very least, she wouldn't be comfortable without starting the fine at \$300.00. Mr. Barlow suggested to fine him the \$10.00 per day like the state law says then waive \$500.00 so the total fine ends up being \$300.00. Mr. Uitti asked if Mr. Cardillo has received a new tobacco license yet. Ms. Guarino stated that she issued a temporary license on April 5, 2016 contingent upon this hearing. Ms. Peterson asked why he stated he was closing in January but remained open. Mr. Cardillo stated that he was not closing, he was relocating to Plymouth but it didn't work out so he decided to stay here in Bourne. Mr. Cardillo stated that Ms. Butler actually spoke with his partner who never told him Ms. Butler was in but it doesn't make a difference, this is 100% his fault and will take his punishment with what the board sees fit. Mr. Uitti suggested to double the yearly fee for this year. Mr. Barlow asked the Health Inspector, Ms. Butler for her thoughts. Ms. Butler stated that the \$10.00 per day is fair. Ms. Butler stated that after speaking with Mr. Cardillo on the day she gave him his temporary license, he did seem surprised and did come right down to the office to pay for the license. Ms. Peterson stated that she would be comfortable making the fine due today \$375.00. **Mr. Uitti made a motion to fine Steve Cardillo of Good Fellas Smoke Shop \$300.00 for operating a tobacco establishment without a license and \$75.00 for a new tobacco license for this year. Mr. Uitti added that he would like the fine paid for in the office tomorrow. Total due will be \$375.00. Mr. Barlow seconded the motion. It was unanimous.** Mr. Cardillo thanked the board for their leniency.

- 8. APPROVE THE MINUTES FROM FEBRUARY 24, 2016, MARCH 9, 2016 and MARCH 23, 2016 – Mr. Barlow made a motion to approve the minutes dated February 24, 2016. Ms. Peterson seconded the motion. Mr. Uitti abstained. Mr. Barlow made a motion to approve the minutes dated March 9, 2016. Ms. Peterson seconded the motion. Mr. Uitti abstained. Mr. Barlow made a motion to approve the minutes dated March 23, 2016. Ms. Peterson seconded the motion. Mr. Uitti abstained.**

**Mr. Barlow made a motion to adjourn the meeting. Mr. Uitti seconded the motion.
It was a unanimous vote and the meeting adjourned at 8:22 PM.**

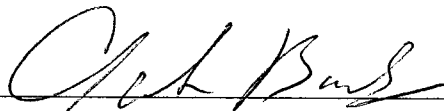
Taped and typed by Lisa Collett, Secretary

Kathleen Peterson



Stanley Andrews

Galon Barlow



Don Uitti



Kelly Mastria –

cc Board of Selectmen/Town Clerk