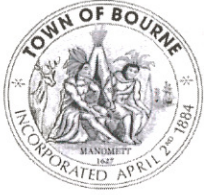


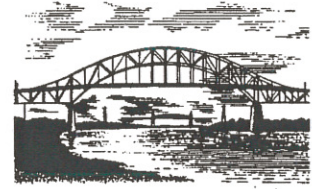
TOWN CLERK'S OFFICE
BOURNE, MASS



Terri Guarino
Health Agent

TOWN OF BOURNE BOARD OF HEALTH

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MINUTES August 26, 2015

Members in attendance: Kathy Peterson, Chairman; Stanley Andrews Vice-Chairman; Donald Uitti, Secretary, Galon Barlow and Kelly Mastria

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

- 1. 6 BOURNE BRIDGE APPROACH – Health Agent, Terri Guarino – Discussion and possible vote regarding issuance of Motel License to new owners of Eastern Inn.** – Theodore Schilling, Attorney for the Eastern Inn and the owner, Divyesh Patel are present for this hearing. Ms. Guarino updated the board regarding the transfer of ownership to Mr. Patel and inspections of each room before he operates under his name. Ms. Guarino did notify Mr. Patel that there were some outstanding violations while under the ownership of the Tubbs that need to be corrected before a new Motel License for Mr. Patel is issued. It was brought to the attention of Ms. Guarino by the Bourne Police Department that some of the guests are actually tenants living here. Ms. Guarino stated that the Health Department will not get involved in a civil matter but the Motel is in violation of the 3 week allotted stay in the motel regulations. Mr. Schilling stated that he started representing Mr. Patel in May of 2015. Mr. Patel was hoping to get ownership of the Motel by June to at advantage of the summer renters. The Tubbs requested to extend the closing until the end of July 2015 because of some of the outstanding health violations. Mr. Schilling stated that other town departments meaning, Fire Department and Building Department did sign off that the concerns they had are corrected. Ms. Guarino asked for a copy of those documents. Mr. Schilling state he would supply the health office with copies of those documents in the morning. Mr. Schilling stated that at the time of the sale, Mr. Patel was not aware that there were “tenants” living in some of the rooms. It was brought to his attention by Ms. Guarino. There were six rooms occupied by tenants. Three rooms of people have already left. The remaining three rooms of occupants will be served eviction notices. Mr. Schilling stated that he expects those occupants to vacant as soon as the law allows. As far as the other health violations, his client has been at the property taking care of everything every day. The only issues left are some window screens that need to be specially orders.

Ten of the rooms have had new drop ceilings installed. Mr. Patel has also applied for a construction loan. Mr. Patel stated through the eviction process. Ms. Guarino stated that Mr. Patel has made a tremendous effort. Most of the major things that the Fire Department has approved is a huge relief. Most of the remaining issues are just basic maintenance issues. Ms. Guarino stated that a temporary license should be issued until she is able to do inspections of all the rooms. Ms. Guarino stated another issue was the insufficient lighting in some of the outside hallways. Mr. Patel stated that the lights have all been fixed. Mr. Andrews stated that there was a major issue with the pool and would like to know what the status is today. Ms. Guarino stated that the pool has been covered which the Fire Department and the Building Department have approved. Ms. Guarino stated that it is not an ideal situation. It is an indoor in ground pool that is not commercial grade and it can't be used. Ms. Mastria asked if there is water in the pool. Ms. Guarino stated that is not. The pool is located in a separate room with locked doors and a sign posted that the pool is closed and do not enter. Mr. Andrews stated that the other concern is that there is an apartment with only one egress into it. Ms. Guarino stated that the apartment is 12 B. She still needs to do another inspection in that unit but it has been vacated. There is one apartment being used by Mr. Patel. This is an efficiency unit that is tied into the motel. Ms. Guarino stated that she has never been in there and needs to get in there for an inspection. Ms. Peterson stated that Ms. Guarino should be able to do inspections in occupied rooms as long as a 24 hour written notice is issued. That way Ms. Guarino only needs to go once and do the entire inspection. Then a full motel license can be granted. Ms. Peterson stated that she would like Ms. Guarino to do the inspections along with a member from the board. **Mr. Andrews made a motion to extend a temporary Motel license for 60 days for 6 Bourne Bridge Approach and within the next 16 days the Board of Health be given access with the owner responsible for notifying the existing tenants which a 24 hour notice with a date and time of that inspection. Mr. Uitti seconded the motion. It was unanimous.**

2. 85-93 MAIN ST, BUZZARDS BAY – Discussion and possible vote regarding noncompliance with the correction order dated August 12, 2015 - Mr.

MacDonald was present for this hearing. Ms. Peterson stated that she was at the building visiting Jake's Pizza with Ms. Guerino. She was asked to go into the back of the building and look at the condition it is in. The building is a disgrace. Ms. Guerino stated that a document was submitted late this afternoon regarding some of the cleanup. Ms. Peterson reads the document that was submitted. Mr. MacDonald stated that subsequent to his discussions with the Building Inspector, Roger LaPorte, he has also had communications with Waste Not Inc, which there is a contract being drawn up to clean the inside and the outside of the building. Mr. MacDonald stated that he has a copy of a contract from 2014 with a roofer who was supposed to fix the roof back then. At this point he is meeting with emergency contractors to address the issues with the roof and the other items. Mr. MacDonald wanted the board to know that the rear of this building has not been

rented out in years. A previous tenant, Mr. De Chamborque used that area for storage only. Mr. MacDonald stated that after speaking with Roger LaPorte, he learned that the two buildings on each side of his building are in the process of being marketed by Commercial Realty Advisors. Mr. Barlow stated that he is not comfortable listening to second hand information that Mr. MacDonald has after a conversation with the Building Inspector. The board just wants to know how Mr. MacDonald plans on cleaning this property up. Mr. MacDonald stated that he will hire Waste Not Inc. to do all the cleanup. Mr. Andrews stated that the letter sent by the Health Agent says a contract must be in place within 5 days. Mr. Andrews asked if there is a contract in place. Ms. Guarino stated yes. Mr. Andrews asked about the smoke detectors, the entrance ways, egress doors and other emergency issues. Mr. MacDonald stated those issues will be addressed on Monday. Ms. Guarino stated that these issues are really emergency issues and could cause harm to others occupants in the building. Mr. Andrews stated that regardless of anyone using the building right now, the roof leaking and the unsecured doors is a perfect habitat for rodents and other nuisance causing animals. Ms. Peterson stated that she is not happy with the dates from the letter sent and the contract received. Ms. Peterson pointed out that the letter is dated August 12 but the contact was just handed in this evening. This is much longer than the 5 days that were allotted. Ms. Peterson stated that she is aware that Mr. MacDonald knows the laws pretty well and asked him why the board should believe he is proceeding with the cleanup of this building. Mr. MacDonald stated that the board will just have to believe him based on his reputation. He can't guarantee that the work will be started on Monday. He just knows he has an appointment to meet with emergency contractors to get into compliance. Mr. MacDonald stated that he is not trying to mislead the board but it does take time to meet, schedule and start working on these repairs. That is the best he can offer the board at this time. Ms. Peterson stated that the board should hold an emergency special meeting next Wednesday, September 2, 2015 with proof and copies of signed contracts. 30 days has been long enough. **Ms. Peterson made a motion to have a meeting next Wednesday for just this item and if the contracts are received by the office then the meeting can be cancelled.** Mrs., MacDonald stated that he feels the board is being unfair. Ms. Guarino stated that she needs to find out where the board can meet on September 2 because Board of Health has not reserved the lower conference room for that date. Mr. McKenzie owns the property abutting Mr. MacDonald's property. Mr. McKenzie stated that back in 2005 he had to contact Mr. MacDonald regarding a 65 foot boat that was on his property. Mr. MacDonald came and moved the boat onto his own property. The board is still there today. Mr. McKenzie stated that 2 years ago, he complained to Mr. MacDonald about a sanding truck on his property. The truck was moved to Harwich. There are always tires, abandoned cars and lots of other junk that get onto Mr. McKenzie's property and Mr. MacDonald will not always return his complaint calls. Mr. MacDonald stated that he does not agree with Mr. McKenzie statement. **Mr. Andrews seconded the motion. It was unanimous.** Ms. Peterson stated the board will continue to hear 71-73 Main St at this time.

3. **71-73 MAIN ST, BUZZARD BAY – Discussion and possible vote regarding status of dilapidated buildings** – No one was present for this hearing. Ms. Guarino stated that the owners of this building is Christopulos Realty Investments. Mr. Andrews stated he is stepping off for this item. Ms. Peterson stated that the board, in regards to 71-73 Main Street, Christopulos Realty Investments is begin fining today at the maximum amount allowed and move forward with closure of the building. Ms. Guarino stated she does have some information to give the board pertaining to this property if the board would like to skip this item for now. Ms. Peterson stated that Mr. Andrews can step back on. 71-73 Main St will be moved to the end of the hearing. Mr. Andrews stated he is stepping off for this item. Ms. Guarino stated that this property directly abuts Cape Cod Burgers and Fries. This is a vacant building. The windows in the front of the building are covered with paper because the floors in the front of the building have collapsed. The rear is very overgrown. There was no door so you could walk right into this building were the ceilings, walls and floors are collapsed. Also a problem with skunks and other animals habiting this vacant building. Ms. Guarino stated that she should not have entered this building due to all the safety issues but she was with the Building Inspector, Roger LaPorte and Deputy Fire Chief Pelonzi. Ms. Guarino stated that she has spoken with an attorney, Thomas Moriaty and their resent discussions have been fairly productive. Ms. Peterson asked why Mr. Moriaty is not present this evening. Ms. Guarino stated that the attorney stated to her that he had no intention of attending this meeting. Ms. Guarino stated that Mr. LaPorte contacted her after business hours to inform her that someone had pulled a building permit to demolish a portion of this collapsed structure. Ms. Guarino stated that applying for the building permit is consistent with her conversation with Mr. Moriaty just a few days ago. Mr. Peterson stated that she does not like that fact that Ms. Guarino is answering for attorneys or owners of building because they choose not to appear for the hearing. That is not part of Ms. Guarino's job. Ms. Peterson stated that because there is no one present for discussion the board will start fining the owners as of today until the building is torn down or there are building permits submitted for repair. Ms. Peterson asked what the maximum fine per day would be allowed. MS Guarino stated that she disagrees with the owners being fined in this situation because the owner has so far complied with boarding up and has been in communication with her and the Building Inspector. Ms. Mastria stated that the maximum allowed fine is \$100.00. Ms. Peterson stated that if the building permit is not in the hands of the Health Agent by tomorrow morning, than this will go back on the agenda for the next meeting. Ms. Peterson stated that she would like something other than the building permit signed by Mr. Christopulos stating he understands the building needs to be demolished. **Ms. Mastria made a motion to continue 71-73 Main Street until we have a written proposal and a written contract to demolish the building. Mr. Uitti seconded the motion. It was unanimous.**

4. **FUTURE GENERATION WIND – Discussion and possible vote to review opinion of town counsel with regards to the applicability of wind energy**

conversion systems regulations as they relate to future generation – Ms.

Peterson stated that she will not read the entire proposal or the remarks from town counsel as it relates to the easement. Ms. Peterson stated that this discussion will begin with page 4. Ms. Peterson did meet with Mr. Troy who stated in the document submitted that records of the Board of Health revealed that Future Generation Wind, LLC heard at a board meeting December 2014. The Board of Health requested that application for variances be filed. It appears that the Board of Health requests have been ignored. The Supreme Judicial Court has ruled that local Boards of Health have been granted express powers to regulate nuisances. I leave to the Board of Health a determination as to whether the wind energy conversion system regulations apply. The determination should be conveyed to the Board of Selectmen who must act consistent with the public interest. Ms. Peterson stated that her interpretation of this is that the Board of Health wind conversion regulations do apply to this project. Mr. Barlow stated that he does not feel that the Bourne Board of Health regulations extend into another town. Ms. Peterson stated that Mr. Mann had to record documents in both Plymouth and in Barnstable for this project which was required by the state. Ms. Peterson stated that her concern is for the citizens of the Town of Bourne and according to a letter sent by email the citizens are demanding that the Board of Health do something to protect their concerns. Mr. Barlow stated that Mr. Troy's response is very vague. Basically all that is being stated is if the Board of Health feels they have jurisdiction then take it to the Selectmen. Mr. Barlow stated that Mr. Troy never said the Board of Health is right. Ms. Guarino stated that this all came about during code enforcement meetings. Ms. Guarino stated that the board needs to vote as to whether or not you would like to speak to the Selectmen. Mr. Andrews stated that the Board of Health does not need to speak with the Selectmen on this matter. It is up to the Board of Health whether they feel that these regulations are going to apply to a nuisance that travels across town lines, into our community and whether they want to enforce the regulations. Ms. Guarino stated that she did notice something missing from the current regulation and that is the limit on shadow flicker. Mr. Andrews stated that they did not put one in there specifically because shadow flicker is shadow flicker. One flick is too much. The board determined it was a nuisance during the 12 months of hearings. Ms. Peterson stated that shadow flicker is not to leave your property line period. Mr. Barlow stated that it may. The turbines are not built yet so the board has no way of knowing what kind of nuisance they might generate. Mr. Barlow stated that he does not feel shadow flicker will be a nuisance for Bourne. Ms. Peterson stated that the board wrote these regulations to protect the people of Bourne. They were written by an attorney and accepted by the Department of Environmental Protection. Mr. Andrews stated that the regulations were contested by another attorney and they were upheld. Ms. Peterson stated that the board has requested that Future Generation Wind apply for a variance and they have not. Mr. Barlow stated that there are 3 wind turbines going up. One of the turbines may have shadow flicker on a Bourne resident. That turbine is not even being built yet. Ms. Peterson stated that she would like to add that Mr. Mealy was quoted in the newspaper as saying Mr. Mann had full Board of Health approval for these wind

turbines and that statement is not true. So to put it on record, The Board of Health did not and have not reviewed and as far as she knows, that the only thing that the Board of Health signed off on is for portable toilets be allowed to be placed there. The Board of Health has not given approval for the wind turbines. Ms. Guarino stated that the board has not disapproved either. Ms. Peterson stated that is right. Ms. Guarino stated that primary statement according to the minutes is that it would be in Mr. Mann's best interest to apply for variances. Mr. Barlow stated that was not voted on. Ms. Guarino stated that there needs to be a uniform messages which needs to be conveyed to both the public and the Selectmen. Ms. Guarino stated that this is being discussed tonight to get a uniform message. Ms. Peterson stated that this is being discussed tonight because the board finally received a ruling from town counsel. Ms. Mastria asked what happens once the turbines are built and shadow flicker does leave the property. Ms. Guarino stated that the permitting authority would have to address the nuisance issue. Mr. Barlow stated that would be Plymouth. Ms. Peterson stated that the nuisance would need to be followed up on by Bourne Health Department not Plymouth. Ms. Guarino stated that she would have to respond to the nuisance complaint but the follow-up and the resolution would need to come from Plymouth because that is where the turbine is located. Mr. Barlow stated that Plymouth would not be able to do anything because they do not have a regulation and provided the owner of the turbines are conforming the state regulation, there is no violation in that town. The state wind regulations are not as strict as the Bourne Wind Turbine Regulations. Mr. Barlow stated that this hearing is basically asking this board if we support the transportation of the equipment. Why don't we simply say we do not support the transportation of the equipment to the site. The Board of Health is supposed to let the Selectmen know whether we support the request to transport the equipment through Bourne. Mr. Andrews stated that the Selectmen did not formally request that of the Board of Health. Ms. Guarino stated that what is being requested is the Board of Health has regulations over nuisances and nuisances effect the public health wellbeing. The Selectmen want to make a ruling that is consistent with public interest including the Board of Health's opinion. Mr. Barlow stated that the board has not received enough information to form an opinion. Ms. Peterson stated that the board should put down in writing on Board of Health letterhead to the Selectmen and state that the Board of Health has not received enough information to form an opinion whether or not this project will cause public nuisance or not. Mr. Andrews stated that the letter should also go to owners of Future Generation Wind. **Mr. Andrews made a motion to send a letter to Future Generation Wind and copy the Selectmen that the Board of Health had requested at their December 10, 2014 meeting information so that the board could determine if this project will affect the health and conform to Bourne's Wind Energy Conversion regulations. The board at this time has not received this information and cannot make a determination on the project. Therefore the Board of Health does not support this project going forward until this information is supplied to the Board of Health and a variance is applied for. Ms. Mastria seconded the motion. It was unanimous.**

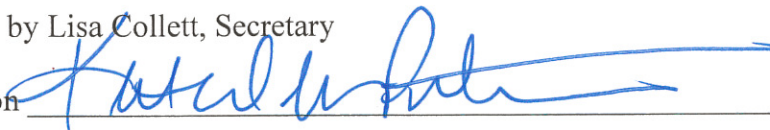
5. **KATHY PETERSON – Discussion and possible vote for protocol on involvement of Town Counsel on board of health decisions.** – Ms. Peterson stated that this does not include regulatory meetings that the Health Agent may have with other groups in the building that they choose to bring Mr. Troy in. This has to do with is any decisions that the Board of Health makes or is responsible for, anytime town council is to be called, it must come through the board. It is not always needed to have Mr. Troy involved. The board has never involved Mr. Troy before and it will set a bad precedent. Mr. Andrews stated that the policy in the past has been that the board will decide as a group if legal counsel is needed. Mr. Barlow stated that also in the past the board has been denied access to town counsel but the request always has come through the board. Ms. Guarino asked where this is coming from because she has never done that. It seems as though there have been a number of issues lately that Mr. Troy has been notified of. Ms. Peterson stated that some recent memos, Mr. Troy has been copied on without the board's knowledge. Ms. Peterson stated that she just wants to make sure that everyone is aware that town counsel shall not be involved in any decisions unless it is voted on by the board. Ms. Peterson stated that she does not want Mr. Troy copied on email because that is engaging Mr. Troy on something that the board has discretionary measure over. Ms. Guarino stated that if Town Administrator notifies her that legal advice is necessary then she requests it. Ms. Peterson and Mr. Andrews told her that it must come through the board before Ms. Guarino contacts town counsel. Ms. Guarino stated that sometimes there is not enough time to get through a board meeting before action must be taken. Ms. Peterson stated that she has already discussed this with the Town Administrator and he too is aware that a board member must be notified before town counsel. Ms. Peterson stated that this board does not operate through town counsel. It never has and does not have to. **No action was taken.**

6. **APPROVE THE MINUTES from April 22, 2015, May 13, 2015 and July 22, 2015** – Mr. Andrews made a motion to approve the minutes of April 22, 2015. Mr. Uitti seconded. It was unanimous. Mr. Andrews made a motion to approve the minutes from May 13, 2015. Mr. Uitti seconded the motion. It was unanimous. Mr. Andrews made a motion to continue the minutes until the next meeting. Mr. Uitti seconded the motion. It was unanimous.

Ms. Peterson made a motion to adjourn the meeting. Mr. Uitti seconded the motion. It was a unanimous vote and the meeting adjourned at 8:55 PM.

Taped and typed by Lisa Collett, Secretary


Kathleen Peterson



Stanley Andrews

Galon Barlow _____

Don Uitti  _____

Kelly Mastria –  _____

cc Board of Selectmen/Town Clerk