

TOWN OF BOURNE BOARD OF HEALTH

24 Perry Avenue
Buzzards Bay, MA 02532

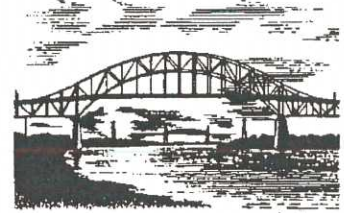
www.townofbourne.com/health

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MINUTES December 9, 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; Jamie Butler, Health Inspector; and Lisa Collett, Secretary

1. Town Counsel- Discuss litigation procedures and Wind Energy Conversion System Regulations.

Bob Troy, Attorney at Law, was present for this hearing. Galon Barlow recused himself. Counsel wanted to discuss how the case will be run so that the process is understood by the members of the Board of Health. Board of Health staff will work directly with the Town Administrator and Counsel as this process is done internally. Attorney Troy is responsible to the Board of Selectmen as they are the executive body for the town and have control over litigation. Mr. Troy discussed this procedure further and stressed the importance of the open meeting law, and the restraints it has imposed onto the Board of Health. The members of the Board of Health cannot discuss this case with one another in any way that violates the open meeting law because it will impact the litigation process. Once litigation is filed in Barnstable Superior Court, the members of the Board of Health may then meet in executive session to discuss this case amongst one another. If a board member has a specific concern they would like to express, they must communicate this to the appropriate Board of Health staff personnel so that the staff personnel may take whatever action they themselves deem appropriate. This administrative process requires direct collaboration between Attorney Troy and the Town of Bourne staff personnel, stressing again that the Board of Health itself does not run the litigation process.

Bob Troy requested that the Board of Health staff prepare any and all documentation on file pertaining to Future Generation Wind to provide him with. The Board of Health in conjunction with staff needs to prepare a statement of what the objectives are in engaging in litigation. Mr. Troy discussed subjects that will most likely be addressed during the litigation procedure including: a challenge to the boards' jurisdiction, which is also critical to the jurisdiction of the court; and the contention that a variance to the Wind Energy Conversion System Regulations is required. The Town of Bourne must be prepared to defend the provisions of the regulation and the interpretation of those provisions that suggests that the Board of Health does have jurisdiction and in this case, and therefore, the court has jurisdiction.

Kathy Peterson expressed her concerns about how this process is conducted and discussed how confidentiality is a primary concern. Counsel stated that if the members of the Board of Health would like to send a single representative to future meetings pertaining to the litigation procedure, it would first have to be approved by the Town Administrator. The point was raised that this creates potential scheduling issues where meetings take place during normal business hours of the town. Kelly Mastria asked Counsel if he felt as if the Selectmen were wrong in granting their motion. Mr. Troy stated that he

did not review the official record of the meeting yet but no, the Selectmen were not wrong in the motion to permit the Board of Health to engage in litigation. **No action was taken at this time.**

2. **ISWM UPDATE- Daniel Barrett- Discussion and possible vote on the following items:**

- **to approve final definition of "Acceptable Centraste" thus allowing an Amendment to the Site Lease and Development Agreement with Harvest Power;**
- **Residential Recycling Center Policy review;**
- **Update on Phase IV Stage 1 Cap Project;**
- **Update on Joint Base Cape Cod Effluent Line Connection Project;**
- **Discussion of potential negotiations to purchase land to the south of the landfill;**
- **Discussion of possible expansion of the landfill beyond Phase VI.**

Dan Barrett is present for this hearing. See document submitted by Dan Barrett. Kathy Peterson mentioned her concerns that in the past the Board of Health has been counseled by Stephen Torres in regards to the wastewater treatment system at the landfill. Stephen Torres will need to be notified on this matter. It is Mr. Barrett's belief that Article 97 covers roughly 15,000 acres of the land on the base. This process requires legislative action. The effluent line that the landfill is seeking to connect to is roughly 60 feet from the landfill leaching tank. The Army will have to issue the landfill an easement to complete this process. Mr. Barrett discussed the Potential to Purchase Land to the South of the Existing Facility. Excavating in the Phase VI portion of the landfill will begin next spring. This will require relocating the ISWM office and the removal of approximately 500,000 cubic yards of sand. The sand is necessary to satisfy construction of upcoming cap and liners. Purchase of the land to the South would allow a permanent relocation of the ISWM office and provide an ample space to store needed materials. Galon Barlow stated that the portion of land needs to be re-assigned, because it is currently site assigned as recycling only. Additionally, Mr. Barrett stated the piece of land to the south would have to be site assigned as waste handling only. Jim Mulvey stated that 'centrate' is a new term for him. Mr. Barrett responded that centrate is the wastewater off of the digester. Mr. Mulvey asked how many acres is the land to the south; Mr. Barrett responded that the land to the South is twelve acres. Mr. Mulvey asked who would be financing the purchase of this land. Mr. Barrett answered that the purchase of the land would be covered by ISWM and retained earnings. **No action was taken at this time.**

3. **71-73 MAIN ST, BUZZARDS BAY – CONTINUED from November 18, 2015 – Terri**

Guarino – Update board – Discussion and possible vote – Stanley Andrews recused himself. Deputy Chief Pelonzi was present at this hearing. Kimberly Bielan, as attorney for Christopoulos Realty and Investments, was present at this hearing. Ms. Bielan stated that at the last Board of Health meeting on November 18, 2015 she informed the board that Noblin & Associates, a consulting engineering firm, would be performing a site inspection on 71-73 Main Street. Ms. Bielan stated that Noblin performed this site inspection on November 20, 2015, and the client has contacted a contractor and is waiting to receive a bid for demolition of the property. Deputy Chief Pelonzi stated that the utilities in the building have been secured. **Kelly made a motion that 71-73 Main Street is in compliance with the Board of Health and that they no longer have to come before the board as long as they keep the Health Agent informed of any updates. Mr. Uitti seconded the motion. Vote was unanimous.**

4. **85-93 MAIN ST, BUZZARDS BAY – CONTINUED from November 18, 2015 – Terri Guarino –**

Update board – Discussion and possible vote – Anne MacDonald and Dan MacDonald were present for this hearing. Deputy Chief Pelonzi was also present for this hearing. Terri Guarino stated that a joint

inspection of 85-93 Main Street was conducted with the building inspector Roger Laporte, the Health Agent Terri Guarino, and Deputy Chief Pelonzi. The only occupied portion of the building is Jakes Pizza. The portion of Jakes Pizza, that's the storefront and also the exterior bathroom and the egress there is the only area that has been affected by the public at this time. It has been adequately repaired. Galon Barlow recused himself for this discussion. Terri Guarino said that she is satisfied with the repairs that have been made thus far. Structural concerns that were noted by Coastal Engineering that are present in unoccupied portions of the building still need to be addressed. Stanley Andrews asked if all the health violations have been corrected. Terri Guarino responded that she requires more clarity on the structural concerns to be able to adequately pose judgment on this matter, as she has not been able to review this document. The document was directly submitted to Terri Guarino at the time of the hearing. **Stanley Andrews made a motion that 85-93 Main Street is in compliance with the Board of Health and to close this matter provided the building department, fire department, and the health department sign off on the structural report and also with the understanding that Mr. MacDonald will have to file to be heard by the Board of Health to abate the fines imposed by the Board of Health. Don Uitti seconded this motion. All in favor. The vote was unanimous.**

5. **300 COUNTY RD - CONTINUED from November 18, 2015 – Stephen Marzelli – Request variance to Town of Bourne Poultry Regulation to keep rooster on property. Discuss and possible vote** – Stephen Marzelli was present for this hearing. Mr. Marzelli reported that they have installed curtains over the coop windows, and that they keep a light on at 3:30 pm when it starts to get dark to keep the rooster awake for longer. Mr. Marzelli stated that the coop is now slightly insulated, and the rooster stays outside for a longer time frame in the morning, additionally they have purchased stockade fence to provide a physical barrier to mitigate the sound. There was no one in the audience to protest this rooster to be allowed to stay on this property. Jamie Butler reported that to date, the Board of Health office has not received any further complaints. **Galon Barlow made a motion to continue without prejudice. Kelly Mastria seconded the motion. All in favor. The vote was unanimous.**

6. **10 MORNING MIST LANE – CONTINUED from November 18, 2015 – John T. McMahon and Karen M. Gibides – Request hearing regarding impacts to Bourne residents from Future Generation Wind turbine project. Discussion and possible vote.** Galon Barlow recused himself. John McMahon stated that at the last meeting Jonathan Fitch, representative of Future Generation Wind, LLC suggested not rushing into a lawsuit and approach this situation in a business-like manner. Mr. McMahon expressed his displeasure and his belief that the personnel undergoing the construction on the wind turbine are working overtime including holidays, weekends, and late at night. Karen Gibides asked Mr. Fitch if he had any further updates from his client on this topic since the last Board of Health Meeting. Mr. Fitch, who was present in the audience, denied answering this question. Kathy Peterson stated that she is certain that we can prevail and that there are a lot of logistics that must be addressed. In regards to the issue of jurisdiction, Joanne Levesque from Duxbury, MA, stated that all boards of health in Massachusetts are charged with enforcing the Massachusetts state air pollution regulation, and that the Town of Bourne Board of Health does have jurisdiction in this issue. **No action was taken at this time.**

7. **411 CIRCUIT AVENUE- I/A SEPTIC SYSTEM NONCOMPLIANCE- Terri Guarino- Discussion and possible vote to issue fines for lack of operation & maintenance contract and violation of Board of Health Alternative Septic System Regulations-** There was no one in the audience present for this hearing. Terri Guarino stated that 411 Circuit Avenue did submit and Operation and Maintenance agreement. It is a standard wastewater and treatment services contract. The contract was forwarded to Barnstable County. Terri Guarino stated that they met the

requirement for both title five and Town of Bourne Innovative Alternative Septic System regulation. **Kathy Peterson made a motion that no action be taken at this time, Kelly Mastria seconded this motion. All in favor, the vote was unanimous.**

8. **7 BENNETS NECK ROAD- I/A SEPTIC SYSTEM NONCOMPLIANCE- Terri Guarino- Discussion and possible vote to issue fines for lack of operation & maintenance contract and violation of Board of Health Alternative Septic System Regulations-** There was no one in the audience present for this hearing. Kathy Peterson asked Terri Guarino if the owners have responded to her official order of non-compliance dated November 24, 2015. Terri reported that the owners have not responded. Kathy Peterson asked what the maximum fine the Board of Health could issue for I/A non-compliance, and Terri Guarino informed her that the first offense fine equates to \$500.00. The Department of Environmental Protection will need to be notified. If Ms. Calloe is not in compliance at the next Board of Health meeting on January 13, 2016 she will be issued a second offense fine of \$1,000.00. **Galon Barlow made a motion to issue Ms. Calloe a fine of \$500.00 and to continue this hearing to January 13, 2016. Donald Uitti seconded this motion. All in favor. The vote was unanimous.**
9. **144 JEFFERSON RD – Barbara Frappier for Joe and Elaine Desorcy – Request waiver to use the existing septic system for a proposed addition – Discussion and possible vote –**Jack Landers Cauley was present for this hearing. The abutters were not properly notified to be able to discuss this request. **Kathy Peterson made a motion to continue to January 13, 2016. Don Uitti seconded this motion. All in favor. The vote was unanimous.**
10. **APPROVE THE MINUTES – from the meetings dated October 28, 2015 and November 18, 2015 – No action was taken at this time.**

Mr. Barlow made a motion to adjourn the meeting. Mr. Uitti seconded the motion. It was a unanimous vote and the meeting adjourned at 9:29 PM.

Taped by Lisa Collett, Secretary
Typed by Jamie Butler, Health Inspector

Reviewed and edited by Terri Guarino, Health Agent

Kathleen Peterson

Stanley Andrews

Galon Barlow

Don Uitti

Kelly Mastria –

cc Board of Selectmen/Town Clerk

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