

Terri A. Guarino  
Health Agent

## TOWN OF BOURNE BOARD OF HEALTH

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TOWN CLERK BOURNE

### MINUTES

#### September 11, 2019 Emergency Meeting

Members in attendance: Kathleen Peterson, Chairperson; Stanley Andrews, Vice Chairperson (present 6:23pm-7:37pm for Savary Avenue discussion only); Donald Uitti; and Kelly Mastria.

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

### Meeting was called to order at 6:00 pm

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

*Ms. Peterson made a motion to take the agenda items out of order. Mrs. Mastria seconded the motion. All were in favor and the motion passed unanimously.*

- 1. 7 Edith Ave – Carmen Shay – Continued from August 21, 2019 – Repair of septic system components at 7 Edith Avenue without disposal works construction permit.** Miss Guarino described the assessment of the septic system conducted today by Cape Septic Services. Ms. Cheryl Duffy was present at the meeting and during today's inspection. She is able to use the system but it has issues if there is multi-tasking or a lot of water use. **Ms. Peterson made a motion pursuant to 310 CMR 15.303-305 to order that the septic tank and piping to the distribution box be repaired/replaced within 2 months of the date of this hearing. Mr. Uitti seconded the motion. All in favor and the motion passed unanimously.** Mr. Carmen Shay described how he was trying to do exploratory work and help the homeowners. Miss Guarino explained the permitting requirements in regards to emergency repairs stating that the only repair considered an emergency is a pump out. She noted that after the fact Mr. Shay had come in to apply for a septic permit but one had not been issued. **Ms. Peterson made a motion to take the \$100.00 paid for the unissued septic permit and apply it towards the \$100.00 fine that would have been issued to Mr. Shay for his non-compliance. Mr. Uitti seconded the motion. All were in favor and the motion passed unanimously.**
- 2. 200 Eel Pond Rd – Alexander Joyce Owner – Requesting variances from the Town of Bourne Board of Health regulation to use an existing leach field within 150 feet of a wetland for a proposed renovation to a three bedroom dwelling.** Health Agent, Terri Guarino, was asked to explain the waiver request submitted to the board. Ms. Peterson asked Miss Guarino if any restrictions would be appropriate. Miss Guarino stated that the nitrogen loading is well below the 5 ppm. There is also 5 acres in contiguous ownership here. There was no public comment. **Ms. Peterson made a motion to approve the waiver request for 200 Eel Pond Rd, owned by Mr. Alexander M. Joyce. Mr. Uitti seconded the motion. All were in favor and the motion passed unanimously.**

3. **37 Beacon Point Road – Michael Borselli P.E. of Falmouth Engineering on behalf of owners Steven and Gina Murray – Request for relief from Bourne Board of Health setback regulations and Title 5 of the State Environmental Code requiring 150' minimum setback from SAS to wetland resource.** Mr. Borselli was present for this item. The Conservation Commission has not approved the delineation of the dunes and will visit the site. **Mrs. Mastria made a motion to continue to the next meeting. Mr. Uitti seconded the motion. All were in favor and the motion passed unanimously.**
4. **39 Lathrop Rd – Owner Mark Dalessandro – Continued from August 2, 2019 – 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.** Miss Guarino brought the board up to speed since the previous meeting. Mr. Dalessandro was present at the hearing. Mr. Andrews entered the meeting but stated he would abstain from participation to get up to speed. Ms. Peterson expressed that she was in the Board of Health office when the photo of the decapitated rooster was received and felt it was highly inappropriate. Mr. Dalessandro apologized. He stated that the reason he has six chickens is because the chickens are more like pets rather than livestock to his husband and that his husband eats approximately six eggs per day. Mr. Jason Mello an abutter from 35 Lathrop Road who was the original complainant was present and opposed the chicken coop on the abutting property as he hears the noise of the chickens clucking. Mr. Dalessandro was surprised that he opposed this because he also had chickens. Mr. Mello confirmed that he had chickens until about a week ago. Ms. Peterson stated the Board of Health does not like to be involved in neighborly disputes and would like to take no action for 30 days and allow for site visits or verification of any noise complaints. **Ms. Peterson made a motion to take no action for 30 days. Mrs. Mastria seconded the motion. Mr. Uitti in favor, and Mr. Andrews abstained from voting. The motion passed.**
5. **Savary Avenue Community Disposal System—Zachary L. Basinski, P.E. of Bracken Engineering on behalf of the Town of Bourne- Continued from July 24 and August 21, 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.** Ms. Peterson stated that this is a septic system under 10,000 gallons/day and the Board of Health is the only approving authority. The Board of Sewer Commissioners does not regulate Title 5 septic systems within the Town. Mr. Basinski, P.E. of Bracken Engineering Inc. was present on behalf of the Town of Bourne. He explained the questions which the board previously asked and responses were prepared for, **see exhibit A**, attached hereto. The Board of Health did not agree with the response to Question 5 that the Board of Sewer Commissioners is responsible for the post-closure or abandonment of the system. Mr. Andrews stated that pursuant to 310 CMR 15.290(2) (d), the Board of Health shall be listed as beneficiaries. Ms. Peterson said these financial assurance mechanisms need to be submitted. Question 6 raised issues that Paragraph 5 eliminated the language that Appendix 1 of Title 5 has which relates to the granting of a perpetual covenant/ easement for the use of the shared system. MassDEP provided an opinion that a '50 year lease' could be substituted for perpetuity, provided there were no other changes to the template. Mr. Troy explained this in his February 2019 memo as well. An opinion from MassDEP was not requested by the Board of Health, but since MassDEP provided this, feels it should be upheld. The Board went through the Obligations section within the covenant provided and MassDEP template and compared changes—**see asterisks**. Appendix 1 of Title 5 has this section on page 2 of the document labeled as "Obligations and Easement".

Ms. Peterson clarified that the Board of Health does not care who does the recording of the documents, but it is not common practice to have one blanket document. They need to see the unexecuted documents in advance to approve them.

Mr. Andrews would like the language in the document to be consistent throughout the document and refer to the system as a "septic system" only as that is what it is.

Mr. Basinski clarified why the title 'Easement' title was removed under the Obligations section, to which Ms. Peterson replied that is a legal question.

Question 7's response does not include the existence of an easement for #45 Savary Avenue which the applicant was only made aware of via a telephone conversation today. The Board stated that was an issue.

Mr. Andrews would like to see the e-mail provided by Presby Environmental relative to Question 9.

Ms. Peterson asked if the applicants were aware of three recent requests for perc tests which came through the office of the Board of Health, meaning that there might be less than 11 dwellings tied into the system. Mr. Basinski was made aware of this today.

Mr. Cannon thanked the board for its time and will work to address these questions and concerns.

Mr. Brian Cleary would like to address the perspective of the homeowners. ((There is much confusion and the residents feel as if they are in between two boards. There was an article published that mentioned that some of the homes do not have room to install their own sewage disposal systems. )) The residents want a solution for Savary Avenue, not just out of frustration but out of practicality. Mr. Andrews agreed and responded. Ms. Peterson added that the question of the Title 5 covenant with an expiration of October 29, 2035 is not consistent with the perpetual easement required in Title 5 and the opinion from MassDEP, which is what the Board of Health has been asking for legal advice on all along.

George Sala, Superintendent of the Dept. of Public Works, said that a new bid package has been put out. This will cover pumping from October 1, 2019 – February 28, 2020.

Stephanie Cormick of 39 Savary Avenue, said she has applied for a perc test and would like to install her own system.

Mr. Cannon said there was a meeting with the residents on Monday September 9<sup>th</sup>.

Trish Lubold of 21 Savary Avenue, stated she has been unable to sell her house due to the septic system complications, which she felt is detrimental to her property value. She is hung up on the brief time frame for the length of the lease/ easement expiring in year 2035. Mr. Andrews explained it may need remediation so the applicant had a two-year window in there so a remedy can be in place prior to 2037 when the lease expires. **Mr. Uitti made a motion to continue this item to the next meeting. Mrs. Mastria seconded the motion. All in favor and the motion passed unanimously.**

*Mr. Stanley Andrews, Vice Chairperson, exited the meeting. Three members present.*

**6. Parrot Bar and Grille –1356 County Rd – Brian Crocker and Tracey Dunnington, Owners – Continued from August 5, 2019 – Vote to continue conditional permit. Hearing in accordance with 105 CMR 590.014-015.**

Ms. Peterson commended owners Tracey Dunnington and Brian Crocker for their hard work and suggested continuing the conditional permit. Health Agent, Terri Guarino, suggested continuing this to the end of the calendar year as renewal applications need to be submitted 30 days in advance. **Mrs. Mastria made a motion to extend the conditional food establishment permit through December 31, 2019. Ms. Peterson seconded the motion. All in favor and the motion passed unanimously.**

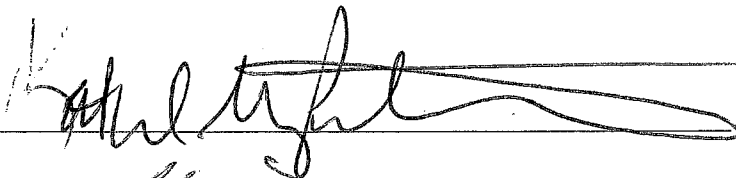
**7. 105 Williams Avenue – Bradley Bertolo of J.C. Engineering, Inc. on behalf of James Coull – Request for relief from Bourne Board of Health 150' Setback Regulations and Title 5 of the State Environmental Code for the upgrade of the existing failed cesspool.** Property is currently served by an existing failed cesspool system which had overflowed into the street. Mr. Bertolo's proposal includes a MicroFast system and leaching facility that will reside in between the two driveways of the property. Ms. Guarino noted that she spoke to the town regarding the over dig and said that the town will not allow any sort of digging on town property for this project.

This would require a 2.8 foot reduction from the 5 foot over dig requirement from the front property line. The Conservation Agent provided an email that he is in favor of an emergency certification and after the fact filing. Plans dated August 16, 2019 will be revised to show the additional relief. This approval is being made without prior Conservation Commission approval due to the severity of this situation. **Mrs. Mastria made a motion to approve the requested variances. Mr. Uitti seconded the motion. All in favor and the motion passed unanimously.**

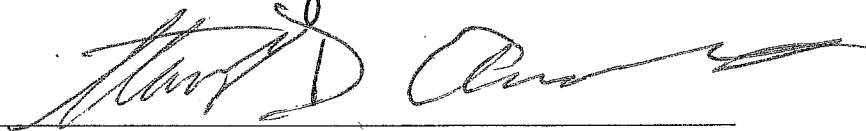
8. **10 Samoset Road, Sagamore Beach – Zachary Basinski P.E. of Bracken Engineering Inc. on behalf of owner John J Duggan – Requesting review of proposed Nitrogen Loading Facilities Aggregation Plan in accordance with 310 CMR 15.216 by creating a nitrogen credit easement on a portion of a parcel located at 0 Pilgrim Rd.** Mr. Basinski explained that Mr. and Mrs. Duggan are looking to build a two bedroom septic system. He indicated that the board has granted the easement to two other properties and that this is a separate part of the parcel than what had been credited to the other properties for septic use. Ms. Guarino commented that if the system does not meet performance standards that it will have to be tested 4 times a year due to it being a nitrogen sensitive area. Mr. Basinski replied that they had originally looked into a conventional septic system but came to the conclusion that the MicroFast system in question would give them more control in monitoring the system in the nitrogen sensitive area. Miss Guarino indicated that this is extremely uncommon and had they known that this plot of land would have so rapidly been divided that they would have required a more stringent standard for the credit land under local regulation. Further noting that this is all based on the density of the Sagamore Beach area and the potable well supplies that are there. Mrs. Mastria inquired about the precedence concerning the numbers provided on the plans. Miss Guarino replied that the 660 gpd number was used in the other projects as well. Ms. Peterson explained that if this system was to fail that they would have to come back to be heard in front of the board once again. Mr. Basinski agreed and put forth that he would have no objection to having it be a condition of the approval. **Mrs. Mastria made a motion to approve the variances. Mr. Uitti seconded the motion, all in favor, and the motion passed unanimously.**
9. **49 Monument Neck Rd – Victor & Michelle Pozza – Requesting review of changes to approved site and septic plan regarding deleting a concrete wall, changing a deck plan and removing 8 feet from the north side of the house.** Mr. Pozza explained that he did not want to use the previously approved plan because he does not want the wall in front of his house. Instead, he would like to build up the area to a slope and install some bushes so that it alters the look of the home and also gives him access to the system in case it needs to be serviced. Ms. Peterson proposed that Mr. Pozza provide a complete packet engineered plans included for the board for review so that they can make a proper decision. **Mrs. Mastria made a motion to continue to the next meeting so that the owner can compile the necessary documents such as a complete application, house plans, septic plans, get a building permit together, and to determine whether it requires ZBA. Mr. Uitti seconded. All were in favor and the motion passed unanimously**
10. **Approve the Minutes— Approve the minutes from the previous meeting August 21, 2019.** Mrs. Mastria made a motion to continue the approval of the minutes to the next meeting. Mr. Uitti seconded the motion, all in favor, and the motion passed unanimously.
11. **Set tentative date for next meeting and adjourn.** September 25, 2019.

**Mrs. Mastria made a motion to adjourn the meeting. Mr. Uitti seconded the motion. All were in favor and the meeting adjourned at 8:23 pm.**

Kathleen Peterson



Stanley Andrews



Galon Barlow Jr.

Don Uitti

Kelly Mastria



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Exhibit A

September 4, 2019

Town of Bourne  
Board of Health  
24 Perry Avenue  
Buzzards Bay, MA 02532

RECEIVED

SEP 04 2019

**Re: Savary Ave Collection and Disposal System  
Supplemental Information**

Bourne Health Department  
24 Perry Avenue  
Buzzards Bay, MA 02532

Dear Board Members,

On behalf of the applicant, the Town of Bourne Board of Sewer Commissioners (BoSC), Bracken Engineering, Inc (BEI), is pleased to offer the following responses to the questions that were raised at the July 24, 2019 Board of Health meeting.

**Question 1** - *Please provide justification to the request for obtaining conservation commission approval of the project and confirmation of the abutting resource areas after board of health (BoH) approval of the system?*

**Response 1** – This request is no longer required. Project approval and confirmation of the resource areas were obtained from the Bourne Conservation Commission on August 1<sup>st</sup>, 2019. The conservation commission identified the abutting resource areas to be the Cape Cod Canal, Land Subject to Coastal Storm Flowage and an associated non-eroding coastal bank.

**Question 2** - *Please provide further breakdown on why it is not economically feasible to install an Innovative/ Alternative Septic system?*

**Response 2** – As documented in the Department of Environmental Protections (DEP) “Title 5 Interpretive Guidance: Consideration of Cost in Determining Maximum Feasible Compliance: DEP has identified that an upgrade cost of 10% of the assessed value of a property should be considered excessive and strongly urges Boards dealing with upgrades to waive or reduce more stringent local requirements.

The average assessed value per structure, based on current Town of Bourne assessments, of the anticipated 11 users on the system, is \$319,418. Based on DEP’s 10% cost value, a system cost in excess of \$351,360 should be considered when determining maximum feasible compliance and the use of an I/A system.

The installation of a proposed MicroFAST (I/A) System would add an additional estimated \$107,000 to the installation and operation and maintenance costs above a non-I/A septic system for a total system cost of \$446,000.

Therefore, based on the above, BEI cordially requests relief from installing an I/A septic system, as the benefit of installing it to protect the above identified abutting resource areas, which are not affected by nitrogen loading, does not outweigh its cost.

**Question 3** – *Variance requests on plans differ from variance requests in application – Please verify which is correct.*

**Response 3** – Variance requests in the application have been updated to correspond with variance requests on the plans.

**Question 4** – *Please provide further justification of reduction of number of required soil logs.*

**Response 4** – Two existing record soil logs and a soil boring log exist within the limits of the proposed system. During the initial design phases of the project and in consultation with the health agent; it was determined that this information was suitable for the design of the system and that additional soil inspections would be conducted by a certified MA DEP soil evaluator during the install of the system.

**Question 5** – *Please provide further information on post closure cost.*

**Response 5** – A post closure cost of \$89,000 has been estimated for the future removal of the proposed community septic disposal system and the remediation of the license easement area. The BoSC have identified that they will be responsible for providing the financial assurance for the future removal of the system.

**Question 6** – *Please clarify which covenant documents are to be used in the application.*

**Response 6** - An updated sample Covenant has been provided. The BoSC cordially request the Board of Health review and provide any additional comments regarding the attached covenant. Upon approval of the Covenant by the BoH; the BoSC will issue the final individual covenant document to the residents for execution and recording.

**Question 7** – *Please identify the existing Savary Ave water line easement on the plans.*

**Response 7** – There are no known water line easements in the Right of Way of Savary Avenue as it is a public road; or on the subject property.

**Question 8** – *Please clarify the requested Remove and Replace excavation reduction (2 ft or 3 ft) and provide further justification for granting of requested reduction.*

**Response 8** – The request is for a 3-foot variance providing a minimum 2 foot Remove and Replace (R&R) around the system. The system has been designed to provide the required Presby field size with a maximum feasible R&R around the field. In order to fit the field within the limits of the existing Army Corp of Engineers septic system easement a reduction in the 5-foot R&R is required. The Presby system design provides increased oxygen transfer to the soil absorption system, therefore providing advance treatment of the wastewater prior to discharge.

**Question 9** – *Please further explain what “minor comments and recommendations may have been made” to the record plans that were identified in the Presby Environmental, Inc. Design Review letter, Dated, June 4, 2019.*

**Response 9** - The Presby comments identified in the June 4<sup>th</sup>, 2019 letter referred to correcting a mis labeled area from a previous iteration of the design and a recommendation to reconfigure the proposed pipe layout for an improved system install.



**Question 10** – *Please clarify the note regarding the removal of spoiled soils note within 5' of the proposed system if a variance is requested to reduce the Remove and Replace limits to less than 5 feet.*

**Response 10** – The note on the plan has been updated to identify “All spoiled soil under the proposed field and all spoiled soil within either 5' of the proposed system or within the limits of the existing license easements allow, shall be removed and replaced with clean sand conforming to Title 5 requirements”.

In closing and on behalf of the Bourne Sewer Commissioners, Bracken Engineering, Inc. would like to thank you for your time and consideration on this application. Should you have any questions or require any further information prior to your next available meeting, please call our office at 508-833-0070 or email the undersigned at [zac@brackeneng.com](mailto:zac@brackeneng.com).

Sincerely,

**BRACKEN ENGINEERING, INC.**

A handwritten signature in black ink, appearing to read 'Zachary L. Basinski', written over a horizontal line.

Zachary L. Basinski, PE, CFM  
Project Manager