



Terri A. Guarino
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TOWN OF BOURNE BOARD OF HEALTH

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MINUTES May 9, 2018

Members in attendance: Kathleen Peterson, Chairperson; Galon Barlow Jr.; Kelly Mastria; and Donald Uitti

Support Staff in attendance: Terri Guarino, Health Agent; and Kayla Davis, Heath Inspector

Meeting was called to order at 7:00 pm

Ms. Peterson asked if anyone was recording at this time. Michael Rausch and Ethan Genter conveyed that they were also recording the meeting.

- 1. Department of Integrated Solid Waste Management (ISWM)—Daniel Barrett, General Manager-- Due to unforeseen circumstances, this agenda has been amended to include discussion and possible vote in regard to closure of the C&D Transfer Station to ascertain that there are no clear or imminent threats to public health.** Board acknowledged that the agenda was amended this evening that this item was an unforeseen circumstance and considered it an emergency. Daniel Barret, General Manager of ISWM was present. He stated that the Construction and Demolition Transfer Stations (C&D) is 2,000 tons ahead of where they were last year. Unfortunately, the expense budget does not have room for variation because the C&D tipping fees to take this material to processors has increased about 20 per ton which is substantial. This is most likely due to depression in the recycling market which have jacked up processing fees. For Bourne, some extra expenses have been due to the high amount of rain fall and need to pump out leachate. Actual revenue to actual expense, there is estimated 1.5 million to be returned to retained earnings. Over the past 5 or 6 years the average is about 2.5 million returned to retained earnings. The expense budget is limited and completely separate from the retained earnings and leachate and C&D tipping fees are the largest expenses right now. ISWM attempted to reduce the C&D movement but that was not enough and ultimately they had to shut down the transfer station. Unfortunately, expense budgets have not gone up much over the past several years while expenses have increased. This is a regional service that the department of integrated solid waste management provides. Loss in profit is not huge to the town, but there is a great impact is to the customers who have nowhere to go and will have to pay significantly higher prices. Another impact is to the state and federal regulatory agencies. When we close that's 100-150 tons of C&D that needs a place to go. Ms. Peterson stated that she does not believe Mr. Barrett made any error and asked what happened. Mr. Barrett explained that other departments are able to get funds easily from the transfer fund if expenses are exceeded during the fiscal year, but ISWM cannot do that. Mr. Barlow stated that public health and safety is most important and that needs to be under control regardless. Mr. Peterson recognized the authority under MassDEP Regulations, 310 CMR 11.00 and 310 CMR 19.00, for Boards of Health to be involved to protect public health and assure this does not happen again. She suggested amending the site assignment, and to make requests to ensure that budget restrictions are not an issue. Mr. Person stated that it may be beneficial to express line item after line item why certain funds are budgeted for and so that there are no cuts which would interfere with the operation of the landfill and affect public health and safety. Mr. Barrett stated that he has discussed how to turn this situation around with the Town Administrator, and that more money needs to be available in the department's budget. There may need to be more money added at Town Meeting to the reserve fund. A proper amount of money needs to be put into this site at all times so that the general manager can proceed to correct issues that may affect public health. This situation may have been far more dangerous, and fortunately it is not.

The Board has to make sure that the landfill is run properly. As an oversight, the biggest thing is the health and welfare of the town. Mr. Barlow stated that these four nor'easters have put a major strain on local contractors, and needed to clean up the aftermath. Mr. Barlow does not understand why there is not a more appropriate reserve fund for emergencies like this. Need to come up with a plan how to make this better for the management of ISWM so that the Town and State does not experience interruptions in service. **Kathleen made a motion to continue this item until possibly Wednesday of next week. Mr. Barlow seconded the motion. All in favor, it was an unanimous vote to continue.**

2. **Tobacco Retailer Inspection Violations-- Discussion and possible vote in regard to Tobacco Compliance Checks conducted by the Massachusetts Tobacco Cessation and Prevention Program where violations were found at two licensed establishments: Citgo, 1030 Sandwich Rd, Sagamore—2nd Violation within 18 months; and New England Farms, 360 MacArthur Blvd, Bourne—1st Violation within 18 months.** Robert Souza, Manager of Citgo was present. He stated that he hired a boy who was a little challenged and needed extra training. He is now checking absolutely everyone's ID to guarantee they are above minimum sales age. Mr. Barlow stated that this is their second offense and they could suspend their tobacco sales permit tonight according to the regulations. **Ms. Mastria made a motion to fine Citgo \$300 for the second violation within 18 month period. Mr. Uitti seconded the motion. All in favor, it was a unanimous vote.** New England Farms—Eric Rosenlund, Manager, submitted a response to FDA and to the Board of Health. Mr. Rosenlund stated that the employee who was involved in the sale to the minor has been terminated. Ms. Guarino read the Tobacco regulation as a reference to penalties for violation. **Mr. Uitti made a motion to fine New England Farms \$300 for first violation within 18 months. Mr. Barlow seconded the motion, all in favor, and it was a unanimous vote.**
3. **Iron Maiden, Inc. DBA Trowbridge Tavern— 109 Trowbridge Road, Bourne—Noncompliance with minimum standards of food establishments, 105 CMR 590.000, and Board of Health permit conditions. Conditional food permit ordered summarily suspended during re-inspection on May 4, 2018. Owner/ Operator, Mary Ellen McCarthy, requesting hearing before Board of Health in accordance with Chapter X of the State Sanitary Code, 105 CMR 590.014-015, to present plan of action going forward. Health Department Staff may demonstrate violations which were deemed to possess significant health hazards. Board of Health to discuss and possibly vote to sustain or modify order of suspension and/or to consider refusing to renew conditional food permit.** Mr. Barlow recused himself for this agenda item and exited the meeting. Mary Ellen McCarthy and Steve De Vellis, friend, patron, and citizen of Bourne were present for this hearing. Ms. Peterson asked whether or not Mr. De Vellis is a part owner or employee or what his interest is. He stated that he is neither. The Chair asked the he have a seat and can comment or read a letter he prepared after some further discussion. Ms. Guarino stated that the Health Department received a complaint, and followed-up with an inspection on May 2nd, and then had to conduct a re-inspection on May 4th. There were a number of violations each day and unfortunately they were not corrected at the time of the inspection on the 4th. For the calendar year 2018 there have already been six inspections of this establishment. Ms. Peterson asked how many critical violations there were. Ms. Guarino stated that on the inspection report it was indicated that they were too numerous to count, because many of them are the same code citation. At that point it was determined that there were too many for this facility to operate. Ms. Peterson asked if Ms. McCarthy realizes that she was operating under a 90-day conditional permit. Ms. McCarthy replied yes. Ms. Peterson asked if she understands that anyone can call or report to the health department that they got sick and the inspectors are required to follow-up within a certain amount of time and conduct an inspection. This is something that happens and unfortunately about half of the time people fail that inspection. Ms. Peterson expressed to Ms. McCarthy that she is very frustrated and that we don't know how to make it any more clear how serious this is. Ms. Peterson asked the owner what she would like for the Board to do this evening, since she requested to be heard before them. The Chair was present during the inspection on Friday and saw all of the critical violations. For anyone who questions why a Board member was also present during the inspection, that is typical procedure if there is a possibility of closing a restaurant, and that it is allowed and encouraged. Ms. Peterson added that she wanted to see the conditions with her own eyes and to assure that everyone is being fair. Unfortunately, what is happening is that you are not being fair to the Board, and what she saw was no regard for the health of the people of this town related to food safety. Ms. Peterson asked what she

wants from the Board and what she is going to do about the situation clarifying that she is the sole owner of the establishment. The responsibility falls on her shoulders, not her friends, and that she needs to do something. Ms. McCarthy stated that she would like to modify the menu, limit food items, and use more prepared foods that that might help. Ms. Peterson asked if she had this new menu, and Ms. McCarthy distributed it to the Board and staff. Ms. Peterson mentioned that this may be too much and asked about the issues with the landlord. Ms. McCarthy clarified that one of the owners is in India until May 19th, but the other owner runs the Sandwich Motor Lodge and they spoke. Ms. Peterson asked if she had a lease and if it states that the owners are responsible for all equipment. Ms. McCarthy said she does have a lease but it does not state that. It says they are responsible for maintenance of the equipment but they are at the point where it can no longer be repaired. Ms. Mastria asked for clarification. Mr. De Vellis said that some parts are obsolete. Ms. Mastria asked if the parts are obsolete then who is responsible for replacing the restaurant equipment. Mr. De Vellis said the landlord is. Ms. Mastria asked if that is in the lease, and Ms. McCarthy was not sure but thinks it just says maintenance. Ms. Peterson asked, for instance, if running a restaurant and making bread dough, and the machine breaks, that is half of my business. Do I call the owner of the building up and tell him I need a new bread dough machine or do I go get a new machine? Ms. McCarthy said she would try to fix it and talked to the owners about it. She stated as far as she knows it just stated maintenance of the equipment is her responsibility. Ms. Peterson asked if she has a copy of the lease or a letter that says this. Mr. De Vellis added that in the case that her hood fan was an issue, Ms. McCarthy was responsible for cleaning, maintenance, and filters but when it needed to be replaced, the owner did so which was \$65,000. By evidenced, this is an example of certain responsibilities the building owner has for equipment. There is a slight communication problem and also a cultural difference with the landlords though. Ms. McCarthy has tried to repair the equipment and that is one reason I got started and I am not a cleaner but I am happy to help out. Ms. Peterson asked Mr. De Vellis who will clean when he's not there. Mr. De Vellis stated Ms. McCarthy has staff cleaning, and there was a team after the February 14th meeting. The steam table contains mercury and the owner would not replace it. We had to order individual parts to try and repair it which has taken five weeks to get those parts. Mr. De Vellis stated in the sense Ms. McCarthy has been maintaining to the best of her ability. We understand your responsibilities as a Board and to benefit and protect the citizens of Bourne and anybody who goes in that restaurant but the lack of business, the shutdown, and the media hype is affecting Ms. McCarthy. Mr. De Vellis said since February 14th there have been improvements in the place. Ms. Peterson reminded them that she was there on Friday. Mr. De Vellis stated he understood. Ms. Mastria asked if we can get past the violations with certain appliances, what about the cleanliness of the place? Mr. De Vellis stated he does not believe there were any violations of cleanliness of the last few inspections but happy to be corrected if he was wrong. He believes it was more relative to food storage. Staff clarified there were numerous violations relative to poor sanitation. Ms. Peterson stated in Massachusetts fish and shellfish needs to be stored in air tight containers buried in ice with drainage. All the fish stored in the glass door reach in refrigerator was sitting in water, not ice water, not draining, and also in plastic bins, none with tight covers, and the containers were visibly dirty. Quahog's, oysters, fish, and scallops all sitting there in contact with water is a serious issue. The frozen shellfish bag was wide open, which needed to be discarded frozen or not due to the bag being open and the product being severely defective and freezer burnt. Ms. Peterson stated that the walk-in refrigeration door was wide open and that this unit is outside. There was no light, we all had to use flashlights and the light meter still could not get a reading. You couldn't get a temperature reading too because the door is open...and we will not get into what else was wrong in there. So, Mr. De Vellis, you're saying that there were no cleanliness issues but that is what we have been discussing. Ms. Peterson stated that the new menu is a good idea but there are items that should not be on there due to not being able to properly store potentially hazardous foods, shellfish and/or fish yet. Mr. De Vellis stated they are trying to come up with a plan and Ms. Peterson said that we have been too. We get the importance of friendship and applaud you for it and anyone else helping Ms. McCarthy. We applaud Ms. McCarthy herself as it is not easy owning a restaurant. There is no standing for you in this restaurant, what stops you tomorrow from leaving? Which leads us back to square one, understand we know what you want to do but we have nothing to hang our hat on here with you. It us the owner and operator's responsibility. Mr. De Vellis said he understands and is trying to get Mary Ellen at a starting point and that he's sure everyone is aware of her predicament and what she has done for the community. He's not sure how far that gets you when you are versing health safety issues. Ms. Peterson said not a lot at this point. Ms. Peterson reminded how the Board supported Mary Ellen and how Ms. Mastria suggested the public rally and help her back in February. We are still not even a month past that, at the

last meeting we said you could not have one violation, especially critical violations. Ms. Peterson listed the number of serious violations from Friday. The office and board have exhausted all efforts. Mr. De Vellis stated that he understands the frustration of the Board of Health and is wondering if we could find a common ground. Ms. Peterson stated we do not know. She said to Ms. McCarthy that she has more on her plate before thinking about serving fish and other hazardous foods. There is a dishwasher under the bar that has to be inspected. It is in the code that you cannot leave equipment that does not work in a restaurant, and if it works, it must be inspected. Ms. Guarino confirmed that that is correct. Ms. Peterson stated the nonfunctional equipment in the kitchen also has to go. When we were there the dishwasher had no sanitizer, it is a low heat dishwasher. You knew we were coming back, and still increased violations. The board's frustration level is that every time we go there nothing is fixed from the time before, and then we add more to it. Ms. McCarthy stated that she did try to talk to the building owner about getting the equipment out and she never heard back from him. Mr. De Vellis stated we plan on fixing the steam table, and the walk in door by ourselves. From what I understand the dishwasher behind the bar works, but the refrigerator does not but we cannot remove that without permission. Two people stated it was not worth fixing due to rust and needing a new compressor. Ms. Peterson asked Ms. McCarthy if they were to conduct an inspection at the Trowbridge Tavern this evening if they would pass. She stated no, that the kitchen is torn apart and they would not pass. Stating further that they disconnected the gas to clean, cove base of floor, and painting the floor. Ms. Mastria stated she thinks there is a lot that needs to be done before even thinking about going back into that establishment. Mr. De Vellis stated they wanted to hopefully ask for an inspection and have the list done to satisfaction. Ms. Peterson expressed again she has an issue that Steve does not have a legal standing or financial stake in the business and is not an employee there. Mr. De Vellis stated he has committed his time to get her started. Ms. Mastria stated everyone was on board to help and clean and that weaned off pretty quickly because it did not get done. Mr. De Vellis stated he believes a lot of things got done to get a temporary inspection to re-open. Ms. Peterson stated you had four visits from the Board of Health in about a seven day period. Ms. Mastria reiterated that these violations are critical to the public health. Mr. De Vellis stated there were employee staffing issues. Ms. McCarthy added that Marea O'Neil attended a serv safe training today, trying to get full time employees serv safe. Ms. Peterson understands the problem of hiring help but that is the restaurant business. You have to figure out if you are capable of doing it if they do not show up for work. On Friday it did not seem like so, just a simple thing as over a 48 hour period the lightbulb in the walk-in was not corrected. We got a light meter to make sure and you could not install an adequate lightbulb. So tell me how this is going to get done if that could not? Mr. De Vellis said he noticed Ms. McCarthy does not ask for help. He said he did not know about the lightbulb from the first inspection but there was a working lightbulb it's just not bright enough. Ms. Peterson stated Ms. McCarthy knew the results of the inspection. If I have a critical violation at work I have to correct what I do, it is my error. Mr. De Vellis stated they know it is their responsibility but there needs to be some common ground. He stated nobody in this room wants to see her close, and that doesn't mean maybe she should not be closed. Ms. Peterson asked him if he has read all of the reports. Mr. De Vellis responded by saying he has. Ms. Peterson went on to say there were critical violations and yet Ms. McCarthy brought a letter from the state of Virginia that stated the storage of oysters was correct. When in fact that is wrong and we are not in Virginia. Ms. Peterson stated she is concerned about the fish, oysters, scallops, and quahogs that sat in water. Mr. De Vellis stated they are doing away with that. Ms. Peterson responded by saying it does not sound it with the menu stating you will serve shrimp cocktail, quahogs, shrimp scampi, and fish. A lot more needs to be done. I am more concerned about public health then I ever have been. Ms. Mastria stated they need to start fresh then think about what food they need to bring back in. Mr. De Vellis stated they are looking for another inspection to re-open for some time next week. Ms. Mastria commented that if you think you can get everything taken out, repaired, and brought back to speed than perhaps, but I do not believe that will be possible. Ms. Peterson added that we have already said there can be no violations within the 90 day conditional permit and that already got thrown back in our face. Your license is only good until May 23rd you do not have much more time and as it stands right now we are not renewing that license. Ms. Guarino read an inspection report from August 12, 2013 where the same violations that have been recently cited and were discussed this evening were documented. Walk-in refrigerator was fifty eight degrees, door to walk in does not close needs repair, reach in units needs to be cleaned regularly, and bar dishwasher needs repair, same violations as today cited in 2013. She asked Ms. McCarthy, "When is this going to end?" and stated that she no longer has accountability because it is the same repeat health issues that are left uncorrected. Ms. McCarthy was speechless. Mr. De Vellis asked what the inspection process is and if they have a yearly inspection. Ms.

Guarino responded by saying the state sanitary code requires new food permits are inspected on a pre-operational basis, routine inspections in six month intervals, when complaints are received, and/or as needed due to risk or history. This facility has had six inspections in 2018, five in 2017, three in 2016, five in 2015, and four in 2014 because most of those inspections were not satisfactory. Mr. De Vellis asked what prompts those inspections. Ms. Guarino clarified how much time has passed since the last inspection, the nature of violations based on risk, and we receive complaints annually about this facility that do trigger inspection. Ms. Peterson stated with every serious violation she has triggers a re-inspection, so if what you are getting at is we are going to her too many times the critical violations make them go back to check that they have been corrected. Not once have we gone there is there has not been a violation and you knew we were coming. Ms. Guarino stated she is not comfortable granting them a license, there will need to be some kind of hearing. Mr. De Vellis asked if all is correct and there was an inspection next week will it be the temporary license granted? Ms. Peterson said they had a temporary conditional license for every 90 days with no violations. Mr. Uitti stated zero violations, all equipment repaired or replaced in the kitchen and the bar. Ms. Mastria stated she does not see this being corrected in a week and it is not fair for them to keep going out and inspecting. Ms. Peterson suggested coming back before the Board of Health on the 23rd. It is just not working, nothing here to shows that you take this seriously. It is the same ones regarding food and cleanliness. Mr. De Vellis asked if the 23rd is the next time for a new temporary permit. Ms. Guarino read the license conditions which stated that a permit may be renewed for another 90 days if still in compliance when renewal application is submitted you will be informed if it is granted or will need to go to a hearing. Unfortunately we did not get to that point. **Ms. Mastria moved that the Board may need to rescind the suspended license and refuse to issue another license. Mr. Uitti seconded the motion. Ms. Mastria added that according to the regulations, 105 CMR 590.012(H)2(a) through (k), there are 11 items which are each full and adequate grounds for a board of health to refuse to issue a food permit. She has done several. Ms. Peterson agreed and called for a vote on the motion on the table. All members in favor, and it was a unanimous vote to rescind the suspended conditional food permit and to refuse to issue a future food permit for this establishment.** Ms. Peterson stated you have to figure this out for yourself if you can properly run a restaurant. You definitely can and you may need to ask for help. We will do whatever we can down the road.

4. **Approve the Minutes**—approve the minutes from the previous meetings on March 28th, 2018 and April 11th, 2018. Ms. Mastria made a motion to postpone approving the minutes to next meeting. Mr. Uitti second. All member in favor, it was a unanimous vote to continue.
5. **Set tentative date for next meeting and adjourn.** Possibly special meeting Wednesday May 16th at 6pm to modify site assignment for landfill and future budget conditions to make sure landfill is run without causing any public health issues under 310 CMR 11.00. The next regular meeting will be on May 23rd.

Mr. Andrews made a motion to adjourn the meeting. Mr. Uitti seconded his motion. Roll call vote to adjourn: Mr. Barlow, yes; Mr. Andrews, yes; Ms. Peterson, yes; and Ms. Mastria, yes. All were in favor and the meeting adjourned at 8:25 pm.

Taped & Typed by Kayla Davis, Health Inspector
 Edited by Terri Guarino, Health Agent

Kathleen Peterson

Stanley Andrews

Galon Barlow Jr.

Don Uitti

Kelly Mastria

