



TOWN OF TISBURY

Office of

THE BOARD OF HEALTH

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Meeting Minutes – November 14, 2017 – 4:00 PM

The Tisbury (Town) Board of Health (BOH) met on Tuesday, November 14, 2017, at the Tisbury Town Hall Annex.

Commissioners in attendance were Chairman Malcolm Boyd, Michael Loberg and Jeff Pratt. Maura Valley, Health Agent, and Catie Blake, Assistant Health Agent, and Valerie Soushek, Administrative Secretary, were also in attendance.

Chairman Boyd presided and called the meeting to order at 4:00 PM.

Meeting Minutes

The commissioners approved the meeting minutes of October 24, 2017.

Health Agent Operational Updates

NitROE pilot program

Ms. Maura Valley provided the following updates:

- State approval has been received for the first two (2) systems for Brandon Smith and Florin Gafencu;
- Mr. John Smith and Ms. Valley met with Mr. Smith and Ms. Gafencu and the installers last week. Installation is scheduled to occur during the week of November 27, 2017;
- Mr. Reid Silva has submitted the additional septic designs with the nitro tank to the BOH; three (3) plans are before the commissioners today and four (4) are pending the Health Agent's review;
- Paul Wohler, Tisbury Water Department, has withdrawn their application for the pilot program, due to the expense vs. benefit for the low discharge rate.
- Mr. Reid Silva recently conducted a site visit at the Hambrecht property on West Spring Street. He confirmed that there is no benefit to installing a nitro tank at the system with 2 cesspools as the first pit was nearly empty and no waste is reaching the overflow pit. One (1) nitro system is still being planned for the property at the newer system.
- Selectman Melinda Loberg and John Smith will be consulted for the selection of a participant to fill the open space created by the recent changes at the Tisbury Water and Hambrecht properties.
- Samples collected at the point of discharge from the tank and prior to leaching have just a slight odor and difference in color when compared to tap water.

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DWAs approved for the NitROE Pilot

4073	Alberich	215 Hines Point / 11-A-31
4074	Florio	141 Skiff Avenue / 12-C-6
4075	Ellsworth	790 State Road / 40-A-4

Island Housing Trust (IHT)

Ms. Valley presented a binder of the documents submitted to the courts by the Town's Counsel on behalf of Tisbury.

Ms. Valley also provided an update from Derrill Bazy, IHT:

- The State has approved the GPC filter pilot;
- The court has decided to combine the suits against the Tisbury Zoning Board of Appeals (ZBA) and BOH so proceedings will occur as one (1) suit.
- There has been a delay in getting the abutting property owners to schedule the well testing requirement, but their attorney has since contacted the IHT and the testing will be scheduled soon.

Assistant Health Agent Report

Walking School Bus

Ms. Catie Blake announced that she is in the beginning stages of planning a walking school bus program for implementation in the spring; the planning will include consultations with the Tisbury school nurse, police and fire chiefs, developing a map for the routes, and selecting volunteers/safety monitors.

Falls Prevention Update

Ms. Blake confirmed that the fitness class program at the Tisbury Senior Center is going well and the frequency of classes has been increase to two (2) days per week. Ms. Blake requested a small budget for purchasing small equipment that can be stored at the Center, to which Ms. Valley confirmed availability in the FY 2018 budget and her approval.

Commissioner Pratt requested data benchmarking, i.e. actual classes conducted, curriculum for each class, participation and incident rates, to which Ms. Blake agreed to report.

Inspection posting

Ms. Blake reported that she is collaborating with IT to upload future restaurant inspection reports to the Town's website.

Administrative Hearing

4:15 PM James Kozak, MV Honey Company

Mr. Kozak was not in attendance.

As reported by Health Agent Valley on behalf of the Board of Health:

The Town's Town Counsel, David Donefski, has had a telephone conversation with James Kozak, when Mr. Kozak indicated that he would not be in attendance because he did not believe it would make a difference. Mr. Donefski advised to proceed with the hearing since his appointment had been rescheduled once at Mr. Kozak's request, and to make a determination.

Under the food code, raw, unprocessed honey may be packaged and sold without a license as an agricultural product, whereas honey that is processed or repackaged in any way requires a license from the Board of Health and a food processing license from the State DPH if it is wholesaled.

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For several years, James Kozak has been selling honey on the island under the name of Martha's Vineyard Honey Company. Mr. Kozak has not been licensed by any of the Martha's Vineyard boards of health or the Massachusetts Department of Public Health, claiming an agricultural exemption from food licensing requirements.

This past summer, the BOH office received a call from Sam Sawyer, owner of 13 Beach Street Extension, reporting that Mr. Kozak had rented unit 209, a single room commercial space with no running water, and she believed he was living and processing honey in the unit. Ms. Sawyer was advised by the BOH that alleged lease violations were considered a civil matter and would need to be addressed through the court system. The BOH also conducted a site visit and found that Mr. Kozak was selling his honey from a table on Beach Street Extension. Mr. Kozak maintained that he was selling under an agricultural exemption, and was advised that even with an agricultural exemption, he was required to have a hawkers/peddlers permit from the Board of Selectmen to sell on the street.

On October 16, 2017, the BOH office received another call from Ms. Sawyer stating that Mr. Kozak had been evicted and left a large quantity of honey in the unit, where he was apparently processing and bottling it. Ms. Sawyer was concerned with the unsanitary conditions of the unit especially if it was being used for processing honey.

The BOH conducted an inspection of the unit and found multiple buckets and jars of honey being infused with various botanicals, jars of unflavored and flavored honey labeled for sale, and several jars of essential oils that the BOH Agent believed were being used to infuse the honey. There were also a number of empty 60 lb. filtered wildflower honey buckets from Merrimack Valley Apiaries in Billerica.

Posts on Mr. Kozak's Facebook page stated that he infused his honey with different flavorings.

At the inspection on October 16, Ms. Sawyer provided the BOH Agent with a copy of a letter of agreement, from the Sheriff and signed by Mr. Kozak, stating that any and all personal property left on the premises at 13 Beach Road may be considered abandoned and disposed of as the landlord saw fit (Exhibit 1).

The BOH returned to the unit on October 19th. In accordance with sections 8-903.10 and 8-903.20 of the 2013 Federal Food Code, the Agent placed a food hold on the product as possibly unsafe and adulterated, and having reason to believe the hold would be violated, removed the honey and essential oils for storage in an undisclosed location.

The Health Agent confirmed the food hold and Mr. Kozak's right to request a hearing before the Board of Health, in a letter that was delivered in person by a Tisbury Police Officer. An inventory and photographs of the items placed under the food hold were also included with the letter (Exhibit 2).

The BOH advised the other island boards of health and Tisbury retailers of the product hold and advised the retailers to remove MV Honey products from their shelves until further notice.

The following information was also provided by Eric Hickey, Assistant Director of the Mass DPH Food Protection Program:

1. Farms are exempt if they are packing and distributing their own honey in its original form (MGL CH 94 305c);
2. Farms or beekeepers are allowed to distribute or produce their own honey from their bee hives under this exemption;

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3. Adding flavoring or essences to the product is considered processing; therefore, the exemption does not apply and a DPH license to process and distribute food is required;
4. Purchasing and/or repacking honey from other sources is classified as food processing and/or distributing (see #3);
5. Photos supplied to the Food Protection Program indicate possible unsanitary conditions at the facility on Beach Street;
6. The Food Protection Program contacted the source of the “essences” and was informed that the products are not intended for use in food or human consumption. The essences were described as intended for aromatherapy purposes only.

When contacted by the BOH, Merrimack Valley Apiaries reported that they could not provide the amount of product purchased, but they confirmed that Mr. Kozak has made bulk purchases of raw honey, a product of New England, and filtered wildflower honey, a product of Louisiana. Repacking of either of these products requires a license from the BOH and wholesaling requires a State license.

Mr. Kozak scheduled a hearing before the Board of Health on October 24, 2017, but subsequently cancelled his appointment to allow time to be present with his attorney. The hearing was rescheduled to November 14, 2017; however, Mr. Kozak was not in attendance.

Based on the unsanitary condition of the unit where the product was being processed and/or stored (Exhibit 3), the unsanitary condition of the product containers, the unknown and unlicensed packaging operation and adulterated nature of the product with the addition of unapproved and/or unknown substances to flavor the honey, the BOH believes that the honey is unfit for human consumption and recommends that the products placed under the food hold be destroyed to prevent introduction into the retail market.

The Health Agent requested that the commissioners hold a vote to allow the destruction of the honey with the caveat that it be held until any appeal or legal proceedings have been concluded. JP motioned to approve; ML seconded; no discussion; all voted in favor.

Ms. Valley added for the record: *until MV Honey obtains a state wholesale license, the BOH will not permit Tisbury retailers to stock their product.*

Ms. Valley will check with the state on protocols for removing the honey being held by Tisbury retailers. The BOH commissioners believe that if retail establishments return any honey to Mr. Kozak, it will be placed back into the retail market. In order to prevent any future sale of the product, the BOH will collect and store the honey removed from the shelves at Cronig's, Health Additions, and Vineyard Grocer. Commissioner Loberg requested an update on this final matter at the next meeting, if not by email beforehand.

4:45 PM

Chris Alley, Schofield, Barbini & Hoehn

Re: Short Hill Real Estate / 22 Vickers Way (lot 2) / 22-A-4.3

Ms. Valley introduced Mr. Chris Alley and reminded the commissioners of a discussion held at a previous meeting for a proposed septic system, serving a (new) commercial building at Vickers Way, that is expected to produce no more than 60 gallons of waste per day; it is believed that with such a low flow, that the benefits of using an advanced treatment system will be non-existent. Ms. Valley added that the commissioners denied the request for an exemption to the nitrogen regulations citing concern for setting a commercial precedent; given the commissioners' decision, Mr. Alley requested an appointment to propose and discuss a plan for an advanced treatment system for the commissioners' consideration.

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Mr. Alley led the discussion with the following background:

- The property, ¼ acre lot off Holmes Hole Road, is in the Tashmoo Watershed and partially within Zone 2.
- The property owner is planning to build a simple steel building, 40' x 60', and will be plumbed for two (2) half baths. The property owner will occupy half of the structure and rent the other half to a tradesman.
- Based on an assumed occupancy rate of four (4), Mr. Alley and the property owner are estimating a maximum wastewater generation of 30 gallons, worst case 60 gallons, per day.
- Mr. Alley's proposed septic system is designed for 192 gallons per day with a standard 1500 gallon tank and concrete leaching galleys/flow diffusers, 4' X 8' X 18" deep.
- Mr. Alley has consulted with other engineers, including Doug Cooper and Jay Moreau, who concurred with Mr. Alley's cost vs. benefit analysis.

Ms. Valley recommended approval of the plan by the commissioners with contingencies: the availability of regular water meter readings by the Tisbury Water Department to confirm a consistent 60 gallon or less flow rate, the availability of an abatement meter from the Tisbury Wastewater Department, or the availability of a Town sewer connection.

The commissioners, Ms. Valley, and Mr. Alley agreed that if the flow exceeds 110 gallons per day, an advanced treatment system should be installed.

Ms. Valley agreed to research the potential options discussed and Mr. Alley confirmed that he would present the options as they may apply to the property owners timeline for construction.

Re: Joy Carter Luke / 404 Bigelow / 30-B-1

Ms. Valley led the discussion and reported that the subject property is registered as a barrier beach property; however, upon further research, she believes this is an error in the BOH regulations. She confirmed her review of the project with the Tisbury Conversation Commission, who concurred with Ms. Valley and have approved the pending Disposal Works Construction Application. Ms. Valley also confirmed that the proposed septic plan meets all other regulations, otherwise.

Commissioner Pratt motioned to tentatively approve the application pending the re-disposition of the barrier beach issue, which will be finalized at the next scheduled meeting; Commissioner Loberg seconded, and all voted in favor, of the motion.

ML seconded; all voted in favor.

5:00 PM Polhemus, Savery, DaSilva, Architects, re: 21-23 Carolina Avenue

The appointment was cancelled due to the property owners' change of constructions plans.

DWAs approved by the Board

4080 Jeffrey Fagan / 122 Dudley Street / 2-A-4

4081 Richard & Patricia Gray / 44 Edgartown Road / 8-Q-1

4083 Short Hill Real Estate / 22 Vickers Way (lot 2) / 22-A-4.3

Old Business: N/A

New Business

Whittaker/Buechner / 564 Main Street / 4-B-7

Commissioner Pratt motioned to deny the homeowner's request for an extension of the deadline, or to be pardoned, from the Town's requirement to upgrade the single cesspool serving 564 Main

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Street, and to issue the citation if the required upgrade schedule is stalled. Commissioner Loberg seconded and all voted in favor, of the motion.

Bannister / 78 State Road / 8-P-2

Commissioner Pratt motioned to approve an exemption from upgrading the functioning single cesspool with the condition that the system will be upgraded when the property is sold or transferred. Commissioner Loberg seconded and all voted in favor, of the motion, the establishment of a trust notwithstanding.

Elmer Silva / 135 Fairfield Avenue / 26-A-14

Chairman Boyd motioned to approve an exemption from upgrading the functioning single cesspool with the condition will be upgraded when the property is sold or transferred. Commissioner Pratt seconded and all voted in favor, of the motion the establishment of a trust notwithstanding.

Payables and Permits for Approval

USPS (postage) \$245

Valerie Soushek (postage) \$8.05

Maura Valley (travel) \$63

VNA of Cape Cod (nursing services) \$3271.25

VNA of Cape Cod (nursing services) \$1256.75

Edgartown BOH (public health) \$2814

The meeting was adjourned at 5:45 PM.

Respectfully submitted,

Valerie Soushek

Document(s)

The Board of Health accepts the meeting minutes, dated November 14, 2017, as presented.

Date: 2 Jan 2018

Signed: 