



## **TOWN OF TISBURY**

*office of*

### **THE BOARD OF HEALTH**

PO Box 666, 66 High Point Lane  
Vineyard Haven, Massachusetts 02568

#### MEETING MINUTES – May 23, 2023 – 4:00 PM

The Board of Health (BOH) commissioners met at the Tisbury Town Hall Annex, 66 High Point Lane, on Tuesday, May 3, 2023, at 4:00 PM. The meeting was also available virtually by Zoom (meeting ID: 890 2811 6358 and passcode: 098211) or by phone at 646-876-9923.

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

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

Visitor via Zoom: Mr. MacAleer Schilcher

In-person visitor: Ms. Pamela Street

The meeting minutes for April 11, 2023, and May 2, 2023, were unanimously approved as written by the commissioners.

#### APPOINTMENTS

4:30 pm Public Hearing – Cesspools as Failed Septic Systems

Chairman Boyd opened the hearing at 4:30 PM and read the “Notice of Public Hearing” as posted in the Vineyard Gazette on May 5<sup>th</sup> and May 12<sup>th</sup>.

## NOTICE OF PUBLIC HEARING

The Tisbury Board of Health will hold a public hearing on Tuesday, May 23, 2023 at 4:30 pm at the Tisbury Town Hall Annex, 66 High Point Lane, Vineyard Haven, to consider adopting a regulation recognizing single cesspools, overflow cesspools and cesspools in a series as non-conforming systems that must be upgraded at the time of property transfer, major renovation or expansion of use. Clarification of Board of Health nitrogen regulations definition of a financial hardship will also be discussed.

Chairman Boyd then read the "Proposed reasoning and wording for regulation" –

Cesspool systems are non-conforming systems that pre-date current regulations, have a high potential of collapse, and may pose a significant safety hazard; and

The use of cesspool systems does not allow for the proper distribution of effluents and may overload the capacity of the soil to remove bacteria, viruses, and phosphorous, and to nitrify ammonia and organic nitrogen compounds; and

Cesspool systems are more prone to surface breakout or backup through plumbing; and

Cesspool systems tend to accumulate sludge which blocks the natural bio mat filtration and adversely affects aerobic digestion.

Therefore, the Tisbury Board of Health considers all cesspool systems (single cesspools, overflow cesspools, and cesspools in a series) to be non-conforming systems that fail to protect public health and must be upgraded at the time of property transfer, major renovation or expansion of use.

One other consideration is that cesspools typically require more frequent pump-outs, and the Island lacks the capacity to handle excessive pump-outs.

### Public comment period opened –

Reid Silva of Vineyard Land Surveying & Engineering disagrees with the proposal to deem overflow cesspools as failed, commenting that overflow cesspools provide the same level of treatment as tank and pit systems, with the first pit containing the solids and the second pit providing leaching.

Mr. Silva listed the following concerns in an email before the hearing:

1. A cesspool that has been equipped with an inlet and outlet tee is considered a "septic tank" under the title 5 inspection regulations and the overflow pit is considered a "leaching pit". These systems are not evaluated as cesspools or cesspools in series. The regulation should be clear if this type of system is "non-conforming" or not. My opinion is that this type of system should be treated as any other tank and pit system just as Title 5 requires. The state does not differentiate between the effectiveness of these systems and I don't believe the town of Tisbury has any evidence to support doing otherwise.
2. Required upgrade upon "major renovation": I believe this could be very subjective and should have a clear measure of "major". I would suggest using language similar to the building code that requires upgrade upon improvement renovation or construction greater than or equal to 50% of the assessed value of the structure. Additionally, I believe there should be an exclusion for renovations required to repair structures damaged by fire, water or other disaster.

Upon Ms. Valley's request, Mr. Silva also provided the following excerpt from the DEP website, which is intended to be guidance, only, not a regulation, as indicated in point #1:

*When inspecting an overflow cesspool system, the inspector should recognize that the first cesspool is nominally functioning as a septic tank. This means that this unit is likely to be fitted with inlet and outlet pipes and will not have the requisite free space of six inches or half a day's storage volume that is required for a single cesspool. Accordingly, in order to assess its suitability to function as a septic tank, the first cesspool should be evaluated based on septic tank criteria, except for water tightness. Thus the inspector must check for sludge and scum levels and depths, condition of inlet and outlet tees, and other septic tank criteria. The leaching system(s) or additional cesspool(s) should then be evaluated based on criteria for soil absorption systems.*

*Because the first cesspool is not watertight, it will leach some effluent and therefore must also be evaluated for setback distances for cesspools as defined in the failure criteria and held to these setbacks for determining failure. In addition, it must also be pumped after the evaluation of its function in order to determine if the bottom of the tank is above or below the maximum ground water elevation, as is required for single cesspool systems.*

Ms. Valley did believe that Mr. Silva's point #2 was valid and worth incorporating in the revision.

Mr. Mac Schilcher expressed his appreciation of the Board's efforts with such regulation updates.

Commissioner Pratt added that the collapse of a cesspool and flooding are also important considerations for banning cesspools.

Based on Ms. Pamela Street's inquiry about the effective date given her recent real estate acquisition, Ms. Valley stated that she would be recommending an effective date of the start of the new fiscal year, July 1, 2023.

The commissioners voted unanimously to approve the following language, including Reid Silva's recommendation in point #2, for revising the regulations, with an effective date of July 1, 2023:

Cesspool systems are non-conforming systems that pre-date current regulations, have a high potential of collapse, and may pose a significant safety hazard; and

The use of cesspool systems does not allow for the proper distribution of effluents and may overload the capacity of the soil to remove bacteria, viruses, and phosphorous, and to nitrify ammonia and organic nitrogen compounds; and

Cesspool systems are more prone to surface breakout or backup through plumbing; and

Cesspool systems tend to accumulate sludge which blocks the natural bio mat filtration and adversely affects aerobic digestion.

Therefore, the Tisbury Board of Health considers all cesspool systems (single cesspools, overflow cesspools, and cesspools in a series) to be non-conforming systems that fail to protect public health and must be upgraded at the time of property transfer, expansion of use, or when a building permit is requested for construction of a project which includes the addition of bedroom(s) and/or living space, or removing a bedroom from the main house and constructing one in a garage/guest house.

#### Public Hearing, Part 2 - Clarification of Financial Hardship Regulations

To clarify the financial hardship definition, Ms. Valley suggested leaving the definition as is:

Financial Hardship means the property owner lacks the financial means to afford the installation of enhanced de-nitrification technology. Income guidelines established for the low interest septic system loan program in place in the Town or authorized in the Town shall be used to determine eligibility for a financial hardship waiver under section 5.5.

and making the following change to section 5.5 (c):

- a) an existing system fails per 5.2b and it would be a Financial Hardship for the applicant to install an Enhanced De-Nitrification Technology, and financial assistance is ~~either unavailable or the applicant fails to meet the income guidelines established for the low interest septic loan;~~

The commissioners voted unanimously to approve the financial hardship clause revision as follows—

- a) an existing system fails per 5.2b and it would be a financial hardship for the applicant to install enhanced de-nitrification technology, and financial assistance is unavailable.

Chairman Boyd closed the public hearing at 4:52 PM.

#### 4:45 PM 105 Hines Point I/A system installation--

In July 2020, in compliance with the previous nitrogen regulations, the BOH approved a MicroFAST "Fast" system for renovating a 4-bedroom home with a 1-bedroom apartment for the new owner, 105 Hines Point LLC. In September 2022, Mr. George Sourati, Sourati Engineering, submitted a revised septic design to relocate the "Fast" system for razing the existing house and constructing a new 5-bedroom home. Since the nitrogen regulations had changed to 13 mg or less at that point, Ms. Valley denied the revised plan, and Mr. Sourati was informed that a NitROE system would be required given the new construction.

As such, he submitted a new design showing a NitROE system which was approved by the commissioners in November 2022.

On April 28, 2023, Mr. Thiago Holmberg pulled a signed copy of the NitROE plan for installation, but the general contractor for the project also gave him a design plan, the "Fast" plan, that was denied last September. As such, Mr. Holmberg installed the "Fast" system, which the BOH office learned of when an operation and maintenance contract was received in our office.

The property owner wants to keep the wrongly installed system, which does not meet our regulations, is not the BOH-approved system, is not the system shown on the design plan that was approved first, is not the plan that was provided to the installer and was not signed off on by the BOH or the design engineer. The only part of the system that could be used is the pump chamber. Therefore, Ms. Valley recommended that commissioners order the removal of the erroneously installed system and the installation of the BOH-approved NitROE system as required by BOH regulations.

Mr. Holmberg understands that he must use the BOH-signed plan for all future septic system installations. Since he will take a significant financial hit by assuming the cost of the erroneous "Fast" system components, Ms. Valley did not recommend the assessment of fines. Instead, the commissioners should make it clear that they could revoke his Tisbury license if anything like this happens again.

The commissioners voted unanimously to authorize Maura to write a letter to Mr. Holmberg stating that this cannot and will not happen again.

The commissioners also voted unanimously to order the property owners to remove the FAST system and install the NitROE system.

5:00 PM Chris Alley & Bruce McNally for 52 Page Way / 38-A-1.5

Re: Extra bedroom variance request

Mr. John Williams submitted a letter (attached) requesting a variance to allow for a sixth bedroom in his home on an undersized lot (less than 80,000 square feet at 77,000 square feet) located directly on Lake Tashmoo. He is offering to install a NitROE system to obtain a variance. However, approving such a request would be unprecedented in a watershed-designated area. The Board has never approved a variance allowing an increase in the number of bedrooms in the Coastal District or District of Coastal Planning Concern (DCPC), regardless of the property owner's willingness to install advanced septage treatment. Furthermore, being situated directly on the Pond, Mr. Williams will likely be required to install an advanced treatment system in a short period of time.

Commissioner Loberg further clarified that the property is in the TMDL area, where the Nitrogen load is high and must be reduced.

Mr. McNally explained that one of the bedrooms is used as a study, not a bedroom. However, according to the regulations, it qualifies as a potential bedroom. Mr. McNally wasn't so concerned about a variance to add a bedroom but rather one to call the "bedroom used as a study" a den.



Ms. Valley explained that widening the doorway to 7 feet removes the bedroom privacy factor and, therefore, should be without a door. Adding a sliding door, as requested by Mr. McNally, would not follow the intent of the regulation.

Given the commissioners' position to deny such unprecedented proposals, Mr. McNally stated that he would need to review other possible options with Mr. Williams.

## HEALTH AGENT REPORT

### Targeted Wastewater Management Plan (TWMP)

Ms. Valley reported that last Thursday, there was a public presentation on the CWMP and TWMP. Environmental Partners reviewed the progress of the CWMP, and Scott Horsley reviewed the TWMP. Mr. Horsley asked Ms. Valley to provide a list of private water supply wells and data for Tashmoo. Ms. Valley has also followed up with West Tisbury's BOH to schedule a meeting with the Tisbury health commissioners.

Mr. Horsley mentioned at the end of the meeting that he was on target to file the TWMP with the State in a timely way so that the Town could qualify for the State revolving fund.

During his visit, Mr. Horsley toured the Tashmoo headwaters and was optimistic about possible remediation that he would consider including in his report.

Ms. Valley received an email from Jay Grande, Town Administrator, via Christina Colarusso, Board of Selectmen, who provided some information regarding grant availability that may address stormwater mitigation, i.e., at the Tashmoo headwaters.

The County Commissioners approved the ARPA funding last week.

Policies for the distribution of the funding are being drafted.

### Mosquito control at Veteran's Park

Tisbury's mosquito control program was reviewed with the Conservation Agent, Jane Varkonda, and it was agreed that using Altosid briquets at Veteran's Park was acceptable but that no spraying should occur this year. This information has been relayed to our mosquito control contractor, Gremlin Fog.

Ms. Valley stated that she will be on vacation from June 1 - 6.

## ASSISTANT HEALTH AGENT UPDATE

### General updates

Ms. Blake has been busy working on getting camps and pools licensed so they can open for the holiday weekend.

She has been assisting the newer agents and inspectors in Edgartown, West Tisbury, and Chilmark with inspection training for camps, restaurants, and pools.

There is a concert on Sunday with (5) vendors at The Cove Mini Golf.

Applications are being received for the Tisbury Street Fair.

Ms. Blake will be working with the Beach Road promoters to draft a plan for recycling since that was an issue last summer.

She requested an appointment at the next meeting to discuss dog-friendly outdoor restaurant seating.

#### DISPOSAL WORKS APPLICATIONS APPROVED BY BOARD

4429 Claire Cain – 95 Colonial Drive / 23-A-56 – upgrade of failed system to NitROE – Approved.

4430 Randy Jardin–146 Causeway Road / 9-A-36–upgrade of failed system to NitROE – Approved.

4431 Tashmoo West Nominee Trust-Herring Creek Rd. / 35-A-2 – Postponed for floor plans.

#### OLD BUSINESS

##### Hardship waiver for Ms. Jolanta Wojnowski, 64 Mariner Road

The commissioners tentatively approved a hardship waiver to Tisbury's Nitrogen Regulations via email so Ms. Wojnowski could immediately begin addressing the sanitation issues from her failed system with a standard Title 5 system. The commissioners voted unanimously to approve the hardship waiver for a standard Title 5 system at 64 Mariner Road.

#### BILLS AND PERMITS FOR APPROVAL

With no further business to conduct, the meeting was adjourned at 5:32 PM.

Respectfully submitted,

Valerie Soushek  
Administrative Secretary

Document(s)

The Board of Health commissioners accept the meeting minutes, dated May 23, 2023, as presented.

Date: 13 June 2023 signed: 