



TOWN OF TISBURY

office of

THE BOARD OF HEALTH

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

MEETING MINUTES – August 10, 2021 – 4:00 PM

The Tisbury Board of Health (BOH) held a meeting on Tuesday, August 10, 2021, at 4:00 PM. Due to ongoing efforts to prevent the spread of COVID-19, the meeting was held via ZOOM, ID 932 0184 0681, and Passcode 295652.

Commissioners in attendance were Chairman Dr. Michael Loberg, Vice-Chairman Jeff Pratt, and Malcolm Boyd, Clerk. Ms. Maura Valley, Health Agent, and Catie Blake, Assistant Health Agent.

Chairman Loberg called the meeting to order at 3:59 PM.

APPOINTMENTS:

4:30 PM Hearing regarding bedroom count at 25 Goethals Way

Chairman Loberg motioned to close the regular meeting and open the public hearing at 4:30 PM in response to correspondence from Mr. William Bruno, dated August 5, 2021, that raises questions about the number of existing bedrooms and nightly occupants at 25 Goethals Way.

The petition claims that there are more than three (3) bedrooms, and ten (10) people spend the night there.

Ms. Valley provided an overview for the commissioners and attendees: in 2014, she visited the property and found five (5) bedrooms. She sent a letter to the property owner stating that only three (3) bedrooms were allowed under the coastal district regulations. They needed to provide a plan for making the necessary changes for

bringing the property into compliance. The property owners came before the commissioners with drawings from the architect saying they were going to open one of the walls in the front bedroom so that it didn't provide privacy. In addition, the property owners stated that one of the second-floor rooms didn't have a window, so it shouldn't count toward the total count of bedrooms. The commissioners accepted this explanation.

The matter has been in litigation for some time, so Ms. Valley didn't receive confirmation of the changes until recently. At that point, Ms. Valley and Mr. Ross Seavey, Tisbury Building Inspector, conducted an onsite inspection and confirmed that the current layout matched the floor plans provided in 2014, showing three (3) bedrooms. However, Ms. Valley added that there is some discrepancy upstairs in that they have the corner bedrooms set up as a den with an odd opening when it was the middle bedroom that didn't have a window and wasn't considered a bedroom. Otherwise, there are three (3) bedrooms based on what you, the commissioners, agreed to with the architect of the property owners.

Mr. Bruno is appealing the 2014 BOH decision based on the current definition of a bedroom in our regulations and the lack of reference to the criteria for providing privacy, which has always been considered in determining bedroom counts. Additionally, the rental ad for the property says that although there are three (3) bedrooms with sleeping for six (6), there are areas to accommodate a total of ten (10) occupants/five (5) rooms. According to the coastal district regulations, that property is limited to three (3) bedrooms and five (5) occupants.

Ms. Lauren Goethals, property owner, and Mr. Howard Miller, Esquire, the Goethals' attorney, are in attendance.

Mr. Miller responded to the statement regarding the number of people who occupied the property and stated it was a gratuitous shot by Mr. Bruno and not part of the hearing.

Mr. Bruno said that he saw some cars there, and he assumed that there were more than six people.

Mr. Miller pointed out to the commissioners that the (BOH) notice isn't appropriate for addressing the technicalities factually; he is prepared to address the matter legally and generally. Generally, the referenced rental advertisement was listed about seven (7)

years ago. There is nothing more current, and (the property owners) are under a Zoning Board of Appeals (ZBA) order that says they will not make any short-term rentals, and they haven't. If Mr. Bruno is complaining about that, Mr. Miller did not view this as a hearing on the occupancy and is unsure whether it's appropriate for the BOH to get into it. It is appropriate for the BOH to listen to Mr. Bruno's complaint that says the BOH and building inspector have incorrectly decided the number of bedrooms. While it's appropriate for consideration, it should be rejected out of hand. Mr. Bruno is trying to substitute his judgment for the people who are intended to make the decision, namely the BOH agent and commissioners, and the zoning inspector. Mr. Miller emphasized that this is nothing different from a decision that was made seven (7) years ago. The problem was that the 2014 decision did not become final pending action by the previous building inspector, who took the very conservative position to not act due to pending litigation.

Mr. Bruno referred to his petition, dated July 22, 2021, to remedy two (2) independent violations of the BOH regulations. First, he stated that he is aggrieved by the health agent's March 25th determination that the Goethals' dwelling has three (3) bedrooms and asks this board to find that the home has five (5) bedrooms in accordance with the governing Tisbury Board of Health regulation 9.1.3, paragraph 7. Secondly, he is aggrieved by the Goethals' knowing willful and ongoing violations of the density regulations in the coastal district, BOH regulation 9.9.7, paragraph 8, that, among other requirements, limits the maximum number of occupants to five persons. The appeals court of the Commonwealth of Massachusetts determined over three (3) years ago that the Goethals are in violation of the coastal district regulations.

The Goethals stipulated that they would do everything necessary to comply with the coastal district regulations to both the land and appeals court. Yet, according to Mr. Bruno, they've continued to violate the bedroom and occupancy limits instead of complying. Mr. Bruno is asking the current BOH to enforce the appeals court determination and provide remedies with teeth to stop this flagrant non-compliance. Calling the Goethals' dwelling a three-bedroom dwelling is not only a tortured application of Title 5. Once you're aware of the Goethals' abuse of the standard, it also fails to meet the more stringent standard established by Tisbury.

Mr. Bruno quoted regulation 9.1.3, paragraph 7, for a potential bedroom. That is, a bedroom is any potential living space other than a kitchen, bathroom, living room,

dining, family room, or service room occupied by a furnace, pump, air conditioner, or similar equipment. Except for rooms less than 70 square feet of floor space as recognized in 105 CMR 410 400B. As Mr. Bruno explained in his July 16th request for this hearing, he is aggrieved by the health agent's decision because it does not affect the reality that the dwelling is being occupied by ten (10) persons using five (5) bedrooms or sleeping spaces as the Goethals call them. Also, regarding occupancy, the Goethals' dwelling is in direct violation of the BOH regulations for the coastal district that limits the occupancy to five (5) persons. Mr. Bruno suggested that the Goethals defrauded the BOH in 2014 by asking for approval to meet the literal Title 5 definition of a bedroom with knowing and willful intent to violate the occupancy standard implicit in the Title 5 statutory law.

This is the same with the Goethals' stipulation to the appeals court. He stated that there is now three (3) years of evidence that the Goethals' testimony under oath to the land and appeals courts that they would comply with the coastal district regulations was knowingly false.

Mr. Bruno described this situation as damaging to his family, the public, and the coastal environment for over-occupancy, double that allowed in the BOH regulations that only allow five (5) persons.

He reminded the commissioners that he provided them with direct evidence in the supplement to his petition that the Goethals are knowingly and willfully violating the occupancy limits. Unlike what Howard mentioned, these are current advertisements to the renters. In 2020 the ad said there was additional sleeping space on the first and second floors.

The other advertisement is currently posted on the website and shows the room they offer as a TV or sitting room, like a bedroom. Sam Goethals, in his deposition, said that it was his bedroom; he's been in that bedroom for the last six (6) weeks next door. In the same supplement, Mr. Bruno provided what he thought to be a fair and equitable intermediate remedy to protect their health and the coastal environment. At the same time, the litigation continues to determine a final remedy of either a teardown or some other solution that compensates them for their damages.

Given the Goethals' history of violations in bad faith and the fact that the occupancy is difficult to prove without direct evidence because it's fleeting, the evidence is in the Goethals' advertisements listing over the limit of five (5) persons and additional sleeping

quarters on both floors. Accordingly, Mr. Bruno recommended that the BOH enforce the maximum limit of five (5) persons to be given teeth to deter future violations. He also recommended conducting unannounced inspections upon probable cause and hefty fines for knowing and willful violations.

Chairman Loberg offered to take questions from the audience.

Mr. Seavey confirmed that the Goethals' property was not showing in the listings provided to the Town because they're using Sandpiper Realty, which is not included in data mining at this time.

The building department will collect all that information manually from Sandpiper's website. Mr. Seavey also stated that the Goethals' property was listed the day after their last meeting, but the ad has been taken down since then.

Ms. Valley confirmed that she has a copy of the 2021 ad, dated July 25, 2021, which offers three (3) bedrooms and two (2) bathrooms.

It does not reference the additional sleeping areas; however, the 2020 ad did mention other sleeping areas.

The house was vacant when she and Ross were last in the house. She asked Mr. Miller about the short-term status, which he denied earlier given a ZBA order; however, the Sandpiper add offers the dwelling at \$7,250 per week.

Mr. Miller responded with his interpretation of that being the cost, maybe, but the Goethals have very clearly been ordered not to enter into any short-term rental agreements, meaning less than thirty days.

He confirmed that the property is not being rented, and they are not challenging the authority of the ZBA to have made that decision in the court, and they have made it very clear that they will abide by it.

Mr. Miller responded to Mr. Bruno's conclusions as outrageous and unfounded. He asked the BOH not to be enticed by his accusations that ought to be brought before the court, including his complaint about the coastal district violations. Hopefully, litigation for this matter will be over by this winter or early spring.

Mr. Miller stated for Commissioner Pratt that he has no personal knowledge of a current rental listing. Mr. Miller also said to the best of his knowledge that he is not aware of more than five (5) people staying in the house over the last thirty days.

He would not necessarily be privy to this information.

Commissioner Pratt presented the same questions to Mr. Bruno, to which he referred the commissioners to the current ad on Sandpiper Realty's website, which lists three (3) bedrooms and sleeps six (6) at \$7,250 per week.

The Goethals have personally used the property from the beginning of June to the middle of July. During that entire period, more than six (6) people stayed in the house, and four (4) cars were parked continuously on the front lawn.

Mr. Miller does not have any personal knowledge of the current usage over the last 1-2 months at the property, but it should be included in the litigation, not with the BOH. He added that the ZBA provided for a maximum of six (6) occupants.

Mr. Seavey reminded Mr. Miller that this hearing has nothing to do with the ZBA decision and the decision of the BOH is not part of the appeals case, so the court will not be hearing that. Instead, they're appealing a decision by the Zoning Board of Appeals. This came about because of his onsite inspection with Maura, the results of which are up for discussion at today's hearing. Also, Mr. Seavey stated that enforcement of the order and conditions of the ZBA was suspended until the litigation had culminated into a decision.

The ZBA granted that; however, the inspection was done to address other conditions like the short-term rental and the annual inspection requirement that has not been done. Mr. Seavey respectfully suggested that it is disingenuous to say that the Goethals are complying with the ZBA's conditions because they aren't technically being enforced given the ongoing litigation.

The issues need to be separated in terms of authority. According to Mr. Miller, the ZBA never allowed the delayed enforcement, and he also could not respond to the overdue septic inspection and the misleading rental advertisement. He would, however, be overwhelmed if the Goethals were not abiding by the order.

Mr. Miller confirmed that they have tried and intend to get the inspection done--one island inspector won't do it because there's a conflict and the inspector who did it last

time moved off-island. He will need to get the names of authorized inspectors from the BOH office. Ms. Valley confirmed this.

Ms. Valley reiterated the purpose of today's hearing—the appeal was the decision that the dwelling was three (3) bedrooms, and the coastal district regulations say three (3) bedrooms and five (5) occupants.

The ZBA used six (6) occupants, or two (2) people per bedroom, according to standard Title 5 language. She advised the commissioners to look back at the plans previously approved when it was agreed there were three (3) bedrooms.

That decision is also part of the appeal. By default, if it's three (3) bedrooms, the occupancy by Title 5 would be six (6), and under coastal district regulations, it would be five (5).

Ms. Lauren Goethals commented on the rental claim.

She stated that there had been no renters in the last year since the decision was made in March. She will contact Sandpiper Realty immediately to remove the listing. They are not renting the house and will not be in the future.

Mr. Bruno countered Ms. Goethals' statement by acknowledging that her comments were limited to renters. He stated that she is one of the individuals, and her family, who was at the house on many days, and she knows exactly how many people were sleeping in the house during June. He asked her to comment further if the BOH is interested.

Ms. Goethals responded by saying that she does not live on the property, but the two (2) older people are her 90-year-old grandparents. They were staying/renting at another property for two (2) weeks because there were more people at the house. When they moved back to Goethals Way, though, they were there with her parents and aunt.

She added that many cars are coming and going there, more vehicles than people many times. She wondered if Mr. Bruno has a camera pointed at their house and suggested an invasion of privacy.

Commissioner Pratt motioned to close the public hearing portion of the meeting and requested more time to review additional documents, specifically the architectural design, and meet with Ms. Valley and Mr. Seavey. They viewed the dwelling in the current configuration. Commissioner Boyd seconded the motion to close the public

hearing. There was no further discussion, and it was unanimously approved. Commissioner Loberg seconded part two of the motion and added a discussion item. He does not want to limit the source of the new data; specifically, he remains interested in the septic system and the status of the (Title 5) report and other data and documents, to which Commissioner Pratt agreed and revised his original motion to include. Commissioner Boyd seconded the motion and its revision. The commissioners unanimously voted in favor of the motions.

HEALTH AGENT REPORT:

COVID-19 updates

Ms. Valley reported that the Island is experiencing an uptick of cases, most likely from the Delta variant. There are a lot of breakthrough cases. The State still hasn't updated its guidance for close contacts. Even though it's not required, it is strongly recommended that people, even if they're fully vaccinated, quarantine and stay away from anyone unvaccinated or at high risk. The wearing of masks, testing for even the slightest of symptoms, and self-monitoring are recommended. Transmission occurs even by vaccinated people. It is unknown when the State will be updating its guidance. Vaccinated people who are in contact with a positive case should get tested.

The test sites are busy after some recent outbreaks. The State is offering test kits to the local health departments, so health agents will be trained on the administration and decide how to roll out the program.

The Island health agents have had conversations about the current mask advisory for wearing masks when indoors. Many would like to move the advisory to a mandate status. One of the commissioners suggested that the term mandate may be more empowering for the merchants to enforce. The police will not be involved in enforcement, and it will be difficult for the Tisbury health agents to manage short of walking Main Street.

According to Nantucket's Health Director, Roberto, other than posting signage, they're not enforcing quarantining and guidance because they don't have the police personnel to assist the BOH's efforts.

Ms. Valley confirmed that out of the 48 cases reported last week, one person was hospitalized. Due to the seasonal population, it isn't easy to show the positivity rate for vaccinated people. We have asked the Commission to provide a rough number of the

Island population; however, it is too difficult to monitor those people who are coming-and-going, coming-and-staying, or day-tripping. The State is basing its figures on the 2019 census, which would be inaccurate for the Island.

Ms. Valley will keep the commissioners apprised of changes to the current guidance or orders on an Island-wide basis.

- Nitrogen regulations

At the last meeting, Chairman Loberg reported that he spoke with the Oak Bluffs BOH chairman. Since then, Ms. Valley has met with the Oak Bluffs health agent, Ms. Meegan Lancaster, who stated her concerns and the status of drafting a CWMP. She also said that they hadn't defined their proposed sewer districts yet. She is concerned about requiring upgrades in potential sewer districts and eventually making them tie in once the sections are defined. It might be more palatable to make the properties within a certain distance from a water body, instead of in a general watershed area, upgrade their septic systems. Ms. Valley stated that she and Chairman Loberg discussed a review of Tisbury's DCPC regulations and proposing a similar change for properties within a certain distance from Lake Tashmoo and Lagoon Pond.

The next possible meeting date with Oak Bluffs BOH is tentatively scheduled for September 28th.

Commissioner Boyd stated that he was contacted by Mr. Tom Zinno, Oak Bluffs BOH commissioner, regarding the new artificial turf at the high school and how it will impact the health of the shared single-source aquifer. Mr. Zinno has asked the Tisbury BOH to discuss this matter for the release of perfluorocarbons.

- Owen Little Way beach testing

The State requires that if there is an exceedance of over 104 that a retest of the water be taken the following day. If the result is a clean report, there's no reason to close and post the beach unless the geomean exceedance, the last five (5) samples taken, exceeds 35. The harbor samples tested high yesterday, August 9th, including Owen Park, Owen Little Way, and Vineyard Harbor Motel. The beach at Owen Little Way was closed because the recent failure caused a geomean exceedance. In general, by the time a retested sample is taken, the water tests clean. Ms. Valley suggests the Tisbury BOH implement a preemptive advisory with signage indicating that swimming is not recommended for 24 hours after a significant rain event that causes road runoff. The

signs will define the 24-hour period. The weekly testing would continue. Additionally, the beach should be posted as closed for swimming after the first exceedance and left until the water tests clean. In the off-season, the outfall pipe discharge at Owen Little Way should be tested to see if any mitigation is needed for improving the water quality.

The commissioners voted to approve Ms. Valley's recommendation unanimously.

ASSISTANT HEALTH AGENT UPDATE:

- General updates

Ms. Blake reported that as she was passing out mask advisory signs last week, she noted that many foodservice establishments didn't have a person in charge with a ServSafe certification due to staffing shortages on the Island. Ms. Blake is working with the businesses to comply and is hopeful that the situation will improve as the offseason nears.

- State Road Concert

Ms. Blake referred to the proposal for a concert at 386 State Road. She is more than happy about the plan and feels there is a minimal risk given that the organizer has only sold 50 out of 500 tickets. But even if he sells all 500 tickets, the event is 10 hours long, and ticket holders will be coming and going; there won't be 500 people in attendance at the same time. Face-covering advisory signs will be posted, and masks will be distributed.

The vendors will have signage enforcing social distancing at 6 feet apart at their booths. All vendors are licensed by Tisbury. Ms. Blake will be in attendance to ensure compliance.

DISPOSAL WORKS APPLICATION(S) (DWAs) FOR BOARD APPROVAL: N/A

NEW BUSINESS:

Health Agent performance appraisal – Chairman Loberg asked the other commissioners to review the report, specifically the comments and Ms. Valley's objectives for the new fiscal year. Any additional comments should be shared with Maura at this time. No future meeting should be needed.

Well Permit – Assessor's Parcel 61-B-22 - Approved

BILLS AND PERMITS FOR APPROVAL

With no further business to conduct, the Board of Health commissioners adjourned at approximately 6 PM.

Respectfully submitted,

Valerie Soushek
Administrative Secretary

Document(s)

The Board of Health commissioners accept the meeting minutes, dated August 10, 2021, as presented.

Date: _____ Signed:  _____
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