



TOWN OF TISBURY

Office of

THE BOARD OF HEALTH

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Meeting Minutes – May 16, 2017 – 4:00 PM

The Tisbury (Town) Board of Health (BOH) met on Tuesday, May 16, 2017, at the Tisbury Town Hall Annex.

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

Chairman Pratt presided and called the meeting to order at 4 PM.

Chairman Pratt proposed an agenda change: to announce new appointments of the BOH commissioners for fiscal year 2018. The motion was approved by all commissioners, unanimously.

Minutes

Approval of the meeting minutes for April 11, 2017, was executed with minor changes noted.

Health Agent Operational Updates

Eversource Vegetation Management 2017

Paul Sellers of Eversource will be scheduling a meeting with Town officials to discuss right-of-way maintenance; specifically, the goals of spraying herbicides for weed mitigation.

Nitro Pilot Program

Ms. Valley and Mr. John Smith have conducted 18 site visits of properties that may be eligible for participation in the Program. The properties include sites where new construction and septic upgrades are being planned within a watershed district. Ms. Valley confirmed that ten (10) properties will ultimately be selected, and simultaneously, a competitive bid is being drafted for septic design engineers.

Appointments

4:00 PM

Mr. Alex Meleney was called before the BOH at 4:10 PM to review his planned basement renovations at 55 Hatch Road / 5-H-5.

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Commissioner Loberg motioned to approve Mr. Meleney's basement renovation plans for a hobby and TV room, no plumbing and no room that affords privacy, with the following conditions:

- The opening for the louvered window must be at least 7 feet wide; and
- The existing pocket door must be removed.

The motion was seconded by Commissioner Boyd and it was unanimously approved.

DWAs approved by the BOH

4036 Island Housing Trust Kuehn's Way

Decision deferred for additional data.

4045 Tom Shockey 338 Bigelow Road / 31-C-2

Mr. Shockey is expanding his dwelling from 4 to 6 bedrooms and believes the current system is showing signs of failure. A very small portion of the parcel is in a watershed, but Mr. Shockey and Reid Silva do not believe that a nitro-reducing system is necessary.

Commissioner Boyd motioned to approve Mr. Shockey's application. Commissioner Loberg seconded the motion with no further discussion. The motion was approved, unanimously.

New Business

Temporary Exemption to Plastic Bag Ban for Wicked Martha's

According to a letter, dated April 21, 2017, to the BOH from Ms. Sue Tonry of Wicked Martha's, Ms. Tonry is requesting that the bag ban not apply to her business January 1, 2017. Ms. Tonry purchased several boxes of special cat and clear for print bags 2 years ago, well before the regulation was adopted.

Commissioner Loberg motioned to approve the requested temporary exemption for Wicked Martha's; Commissioner Boyd seconded the motion; a deadline of 12/31/2017 was confirmed; the motion was approved, unanimously.

Public Hearing

4:30 PM IA System Monitoring and Inspection Reporting Requirements

No public attendees were present. Ms. Valley confirmed that the Hearing was advertised in the Gazette for two (2) weeks.

Ms. Valley proposed the adoption of a regulation calling for the submission of contracts for monitoring and inspection of IA system installations, to the BOH and/or an entity designated by the BOH in a format designated by the Health Agent, within 30 days from the initiation of the maintenance inspection or monitoring.

Commissioner Loberg motioned to accept the proposed regulation for performance requirements of IA system installations, effective July 1, 2017, as recommended by Ms. Valley; the motion was seconded by Commissioner Boyd and it was unanimously approved.

Appointment

Unlicensed Appliance Refuse Storage Eric & Karen Medeiros 16 Ruth's Way / 24-A-31

Present: Eric and Karen Medeiros; Paul Adler, represented 5 other properties as the Trustee.

According to Ms. Valley, Mr. & Mrs. Medeiros requested a hearing before the BOH upon receiving a letter requiring them to clean up their property.

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Ms. Valley confirmed that she has received complaints from neighbors regarding the appliance refuse in a residential zone for the Medeiros' family retail store on Evelyn Way, Vineyard Haven. Photos were also presented showing the poor condition of the subject property which became exposed upon excavation for the sub-division behind his property.

Mr. Medeiros defended the storage by stating that he has conducted (a portion) of his appliance business at his home, garage, and yard, on Ruth's Way since 1987. Ms. Medeiros admitted that the recycling of appliances has not been occurring as frequently as in the past due to the declining price of scrap metal. When questioned by Mr. Barwick regarding the frequency of appliance removal by Bruno's, Mr. Medeiros confirmed that the latest roll-off of (60-70) defunct appliances had occurred 3 weeks earlier. When further questioned about vermin, pests and soil contamination, Mr. Medeiros stated that he has not seen any evidence of rats, mosquito abatement is in place, and appliances are not leaking oil or Freon on the property; however, according to Mr. Ken Barwick, Tisbury Building Inspector, the units are not bled until Bruno's rolls them off the Island.

Ms. Valley cited a portion of the State Sanitary Code that requires *the owner of any household or land, vacant or otherwise, shall be responsible for maintaining such parcel of land in clean and sanitary condition free from garbage or other refuse*. Ms. Valley further stated that whether the property is part of (the Medeiros') home business, or not, it is clearly a junkyard. There is an accumulation of refuse and the business is not licensed / located at the residence on Ruth's Way.

Mr. Paul Adler confirmed that construction of a 12' high fence has been approved by the ZBA; however, Mr. Medeiros' is storing refuse from his business in a residential zone and believes the "rules" need to be enforced.

Mr. Ken Barwick, Tisbury Building Inspector, spoke to very specific zoning regulations, whereas bulk commercial storage in a residential zone is forbidden. Mr. Barwick believes that consensus is needed to enforce the clean-up of Mr. Medeiros' property. Such storage in a residential zone is forbidden even if a home office is recognized.

Commissioner Pratt questioned the justification for such a matter coming before the BOH, to which Ms. Valley confirmed that the state of the property falls under the nuisance regulations and State Sanitary Code as a junkyard; thereby deeming it partially within the BOH's jurisdiction. Ms. Valley then stated that the property is unclean and unsanitary.

Mr. Adler mentioned an additional concern with switches leaching Mercury into the soil and that he is willing to work with the Medeiros' to reach mutual agreement.

Discussions for several options to resolve the storage of used appliances included the following:

- Mr. Adler has received approval from the Zoning Board of Appeals for constructing a (taller) (12') fence;
- Commissioner Boyd suggested the installation of a closed container for storage, to which Mr. Barwick responded with *no...the Town needs to work with Mr. Medeiros to clean-up his property*;
- Since the customer pays a disposal fee, could the dumping of the units coincide with the installation of the new appliance(s), was offered by Commissioner Pratt.

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- Mr. Barwick asked if Mr. and Ms. Medeiros could inquire about leasing a roll-off from Bruno's and storing at Carroll's for the deposit of old appliances, to which Ms. Medeiros was agreeable.
- Commissioner Loberg agreed that Mr. Medeiros' yard is a poor staging area. He proposed the concept of reducing the size of the inventory as an initial step, while other staging areas are explored by the Medeiros', as he is not comfortable with ruling against Ms. Valley and Mr. Barwick's assessment.

Chairman Pratt proposed that the open roll-off concept be explored with Carroll's and asked Mr. and Ms. Medeiros to report back at the next BOH meeting on June 13th, 2017.

Chairman Pratt motioned to table a vote until further information is available from the Medeiros, and reiterated to the Medeiros that (ultimately) if the property is not zoned for such commercial activities, they will be asked to cease and desist; zoning is zoning. Chairman Pratt further motioned to have the Medeiros clear off the current roll-off and reduce the inventory. Commissioner Loberg seconded the motion, and it was unanimously approved.

5:15 PM - Proposed Sewage Disposal Plan for Kuehn's Way

Chairman Pratt opened the discussion by addressing the other Commissioners regarding their position on the 88-page packet received from Island Housing Trust just 8 hours prior. Commissioner Boyd finds fault in moving forward with overdevelopment in an underdeveloped area.

Commissioner Loberg doesn't believe that the document package redefines the project; acknowledged the letter from the abutters; is most concerned with how to protect the abutters; wishes to understand the remedies proposed by Island Housing Trust; requests confirmation of McGrath's testing process; understanding the warranty--who is warranting and what is warranted, to which Mr. Derrill Bazy responded, IHT is providing the warranty.

Ms. Ruth Silman, Esq. emphasized the need to start the program with baseline testing at the abutters' wells, the addition of monitoring wells and referred to Exhibit 8, IHT's Proposal for additional conditions regarding groundwater monitoring and possible mitigations.

Commissioner Loberg referenced Aquapoint installations at 6-7 properties on Katama Road. Some of the systems are out of compliance and standard deviations are making the systems difficult to monitor; thereby, emphasizing the criticality for on-going maintenance, to which Mr. Philippe Jordi stated that a property manager will be on duty 24/7 to monitor the septic system.

Dan Hill, Esq., for the Abutters stated his concerns regarding Exhibit B: It's not acceptable / legal to hook to a public well; the only legitimate option to mitigate contamination is to hook up to town water. He also stated that conservative standards should be applied when it comes to matters of public health and the proposed system does not meet DEPs standards.

Chairman Pratt read a summary of an opinion statement from Counsel for the Town, Greg Corso, to the BOH Commissioners, provided by Ms. Valley.

Chairman Pratt asked Commissioner Loberg how the CES Clean Water system is any different than the proposed Bioclere system by IHT, to which Commissioner responded with: data for the

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CES system is being gathered throughout each phase by the testing lab, but there is no data on the proposed system. Even though the proposal is logical, it is not data driven.

Chairman Pratt admitted that it is not defensible to deny an application if the criteria meets the State standard of 19 mgs/l; there is no written precedent showing that one system is better than another since the Dept. of Environmental Protection has not signed off on any of them. He admitted that he is struggling with Commissioner Boyd's earlier comment and questioned if the MVC has the new information provided.

Commissioner Loberg feels that the MVC does have the information and disagrees with IHT's point in section 3b, which is too late; once a well reads 5 mgs/l, it is too late / the warnings approved by the MVC should occur much sooner in the process.

Mr. Hill stated that he would be on-board with the approvals; however, remedies must be viable prior to the approval of the DWA. Also, like Mr. Horsley, hydrologist for the abutters, IHT's hydrologist used the DEP's mass balance analysis, but with the wrong assumption of 19 mgs/l, but the proposed system is rated at a discharge rate of 25 mgs/l. According to Mr. Hill, Mr. Horsley's data shows that the proposed system will discharge in excess of 10 mgs/l at the property line, in 2 of the wells. And under Title 5, the system must meet 10 mgs/l.

Ms. Valley admitted that the mass balance analyses data were not available to address with the MVC prior to their approval.

Commissioner Loberg finds a tremendous variance with the data; partly, because it is a pilot and doesn't want any well to see 5 or 6 mgs/l; wants the system to produce well below discharge rates of well below the Federal standards.

Chairman Pratt reminded the attendees that this meeting is not a public hearing and will accept questions on the new data only.

Mr. Ken Bilzerian, an Abutter, asked how a decision could be made on a matter of legacy to which Commissioner Loberg agreed.

Chairman Pratt admitted that there appeared to be a discrepancy between the nitrogen release and flow data and asked Mr. Hill about taking the Abutters concerns to the MVC. According to Mr. Hill, the time period for appealing expired.

Mr. Bazy confirmed that the MVC used the DEP's mass balance analysis data: the system needs to produce an effluent of 25 mgs/l, or less.

Mr. McGrath believes that his system addresses the higher strength wastewater.

Chairman Pratt reminded the other commissioners that their vote must be defensible.

Commissioner Boyd motioned to deny IHT's application based on the degree of doubt that remains. Neither of the other commissioners would second the motion.

Chairman Pratt motioned to approve the DWA with conditions: to establish a clear increase/improvement of monitoring, and a better mitigation plan (better than connecting to IHT's

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public well. Commissioner Loberg seconded the motion with discussion: any approval should be contingent upon developing the remedies needed, an improved Exhibit 8 and suggested an additional meeting by the BOH.

Ms. Valley suggested establishing the conditions before approval of the DWA is granted; thereby, prompting Commissioner Pratt to withdraw his motion and asked the other commissioners if they would accept additional data prior to the June 13th meeting. Mr. Hill asked for an opportunity to respond to IHT's Exhibit 8.

Commissioner Pratt moved to accept Ms. Valley's and Mr. Hill's suggestions. The motion was seconded by Commissioner Loberg and it was unanimously approved by all.

The next BOH meeting will be held on June 13, 2017; the Kuehn's Way proposal will be discussed at 5 PM.

New BOH Appointments for Fiscal Year (FY) 2018

Commissioner Loberg motioned to nominate Commissioner Boyd to the position of Chair, Board of Health. The motion was unanimously approved.

A motion was made to nominate Commissioner Michael Loberg to the position of Vice Chair, Board of Health; seconded by Commissioner Boyd; approved by all.

A motion was made to nominate Chairman Pratt to the position of Clerk, Board of Health; unanimously approved by all.

The following bills were approved by the Commissioners:

VNA/Cape Cod, \$2,360

Thomson Reuters, \$190

Staples, \$194.85

The meeting adjourned at 6:23 PM.

The Board of Health accepts the meeting minutes, dated May 16, 2017, as presented.

Date: 3 July 2017

Signed: 