



BOARD OF HEALTH Meeting

Town of Nantucket
131 Pleasant Street
Nantucket, Massachusetts 02554

www.nantucket-ma.gov

Commissioners: Malcom MacNab MD, PHD (chair), Meredith Lepore, (vice chair), James Cooper, Kerry McKenna, Ann Smith
Staff: Roberto Santamaria, Kathy LaFavre, John Hedden, Cathy Flynn, Jake Visco, Anne Barrett, Erin Schrader

~~ MINUTES ~~

Thursday, October 19, 2023

4 Fairground Road, Community Room

This meeting was held via remote participation using ZOOM and YouTube.

Called to order at 4:00 p.m.

Staff in attendance: R. Santamaria, Health Director; J. Hedden, Chief Environmental Health Officer; J. Visco, Health Inspector; E. Schrader, Public Health Nurse
Attending Members: Malcolm MacNab, James Cooper; Ann Smith
Remote Participant: Kerry McKenna
Absent: Meredith Lepore
Early Departure: None

I. ANNOUNCEMENTS

There were no announcements.

II. PUBLIC COMMENTS – ANY MEMBER OF THE PUBLIC MAY ADDRESS COMMISSIONERS AT THIS TIME

There were no public comments.

III. APPROVAL OF MINUTES

1. September 21, 2023

Action: **Motion to Approve as drafted.** (Motion by: Cooper) (Seconded by: Smith)
Roll-call vote Carried 4-0//Cooper, McKenna, Smith, MacNab (aye) MacNab stated for the record that he was not present for the last item of the September 21, 2023, agenda.

IV. SEPTIC LOAN RELEASE REQUESTS (4:01:30)

1. Septic Loan Release Request, 2 Kelley Road

2. Septic Loan Release Request, 9 Ridge Lane

Sitting: MacNab, Cooper, McKenna, Smith

Documentation: Supporting documents and staff recommendations.

Discussion: The Board agreed to vote on 2 Kelley Road and 9 Ridge Lane concurrently. There was no further discussion.

Action: **Motion to approve.** (Motion by: Cooper) (Seconded by: Smith)

Roll-call vote: Carried 4-0//Cooper, McKenna, Smith and MacNab (aye)

V. SEPTIC LOAN PROGRAM UPDATE (4:02:25)

Santamaria provided an update to the Septic Loan Program. Mr. Santamaria stated that Town Counsel has reviewed the vote from last month and confirmed that the vote was legal. This vote will allow a cap on the septic loans at 50% for non-primary residential dwellings. In addition, it will be required to go with the lowest bidder. The program will be able to move forward as voted at the previous BOH meeting.

MacNab stated that the costs are starting to increase.

Santamaria agreed and stated the new Title V is requiring all IA system upgrades in all watersheds is starting to drive up costs.

MacNab stated if they were to all be added up, the ability to sewer a significant part of the island may be possible. **Santamaria** agreed.

VI. BOH APPLICATION REQUESTS

1. 15 Hinckley Lane – Septic Loan Application

Sitting: MacNab, Cooper, McKenna, Smith

Documentation: Supporting documents and staff recommendations.

Discussion: (4:04:43)

Santamaria stated that staff had no objection to this request.

McKenna questioned whether this consideration was based off of last month's vote regarding the septic loan program or if they were considered "grandfathered" in.

Santamaria stated that due to the timeliness of Town Counsel's response, this application will be considered based off of the prior Septic Loan Program requirements.

Action: **Motion to accept applications as submitted.**

Roll Call Vote: Carried 4-0//MacNab, Cooper, McKenna, Smith (aye)

2. 1/5th of 31 S. Cambridge Street – Septic Loan Application

Sitting: MacNab, Cooper, McKenna, Smith

Documentation: Supporting documents and staff recommendations.

Discussion: (4:06:30)

Santamaria stated that the applicant does not want the funding because the property was just transferred but the homeowner's association required him to apply for the loan.

Action: **Motion to deny the application at the homeowner's request.**

Roll Call Vote: Carried 4-0//MacNab, Cooper, McKenna, Smith (aye)

VII. BOH BUSINESS/DISCUSSION

3. Santamaria recommended moving the Sankaty Head Caie Camp discussion from item 14 to item 3 on the agenda. The BOH Board had no objections to his request.

Sitting: MacNab, Cooper, McKenna, Smith

Representative(s): Arthur I. Reade, Jr.; Jonathan W. Finch, Esq., David Hinman (Director)

Documentation: Supporting documents and staff recommendations.

Discussion: (4:09:25)

Santamaria provided an overview of the appeal of the determination that the Sankaty Head Caddie Program meets the definition of a residential camp which meets the definition of a recreational camp and therefore required to submit a recreational camp permit to operate.

Reade explained that the Sankaty Head Caddie Program provides for teenaged caddies who reside at the camp and serve as caddies at the golf club. Mr. Reade stated that this program, which has been in existence since 1930, has never been considered a recreational camp for children and that the facilities have undergone past inspections, without issue. Previously, the use of the word, "camp" had been used to describe the facility and constitute the program as a camp. The program will no longer be referred to as a camp. Mr. Reade went on to explain that the facility is not a recreational program but a work opportunity and a way for teenagers to

make money, prepare for college, and help develop life skills; any recreational activities are incidental. Due to the age and layout of the buildings, it would make it very difficult to comply with the technical spacing requirements, specifically for sleeping arrangements. Mr. Reade stated that he is requesting a determination by the BOH that the facility does not constitute a recreational camp for children.

Finch agreed with Mr. Reade and stated that the variance should be granted. Should the variance not be granted, there would be fewer opportunities for young men across the country to participate.

Public Comment: (4:19:40)

Kurtis Barnes, member at Sankaty, expressed his concerns with the staff's recommendation and spoke in support of the program.

Santamaria questioned if the participants in the program were employees of Sankaty. **Mr. Reade** confirmed that they were not and that they are paid by the members.

Santamaria received confirmation from the State Department of Public Health that this program does fall under a recreational camp.

Cooper asked staff to explain what would be needed to deny the variance.

Hedden explained that all of the documentation received last June shows that they meet the requirements of a camp. However, the minimum space needed for beds would decrease the number of participants pursuant to the regulations and based off of the space of the facility.

Reade asked that the BOH make a determination that they do not fall within the definition of recreational camp for children and not subject to the regulations. If so, this would reduce the number of caddies from 60 – 36 in order to comply with the requirements. As an alternative to the designation of recreational camp for children, a variance is being requested so the facility can continue to operate.

Smith asked what the percentage of caddies are over the age of 18.

Reade answered that half of the participants are over the age of 18.

Smith stated that the regulations are in place specifically for health and safety purposes and perhaps consider the regulations for a residential facility (college like) and agreed that this is not necessarily a camp but need to be cognizant of the health and safety standpoint.

Santamaria explained that the educational regulations would need to be evaluated further and that when he visited the facility during the past three years, COVID was not widespread.

MacNab stated that what this comes down to is the spacing between the beds. Santamaria agreed.

Santamaria explained that the BOH has the final say in making a determination, per Town Counsel and the State.

Hedden stated that in order to become an educational program, they would need to be accredited by a recognized educational accreditation agency. In addition to the concerns with the spacing between beds, there are other housing and sanitation concerns, as well as the age differences between the participants, some still children and others are 18 or older. Any variance would have to provide an equal level of protections.

Reade stated that the program is accredited as a 501 (c)(3) as an educational facility, which was determined by the Board of Appeals.

McKenna mentioned that the website does reference recreational activities and questioned if there are different training requirements and labor laws for those under and over 18 years of age. It may be possible to get certified as an educational program by the State Office of Education. McKenna suggested possibly arranging the dorms so that there would be a separation between the age groups.

After further BOH discussion, direction was provided to Santamaria to continue to work with Reade for a possible solution. **McKenna** added to also research the labor laws for those types of training programs.

4. 43 & 45 Squam Road – Well Appeal

Sitting: MacNab, Cooper, McKenna, Smith

Representative(s): Jeffrey L. Blackwell, PLS – Blackwell & Associates, Inc.
Donald F. Bracken, Jr., P.E., PLS

Documentation: Supporting documents and staff recommendations.

Discussion: (4:45:20)

Santamaria provided an overview of the item and staff recommendations.

Blackwell spoke on behalf of his clients, Andrea and Evan Berkely, and explained his opposition to the proposed well location and why there is an adverse effect to the Berkely's property.

Public Comment: (4:55:56)

Don Bracken, Jr., Bracken Engineering, Inc., explained that he filed the well permit application with the Town and that the placement of the well was well thought out. Unfortunately, the well driller inadvertently began to install the well prior to receiving the approved permit.

McKenna asked questions of Mr. Bracken regarding the plans.

Blackwell reiterated his conversation with Dave Jenkins regarding his understanding that it was to be an irrigation well and that the Berkely's have no plans to expand the septic system. Blackwell explained how the location of the proposed well would adversely impact the best possible repair of a septic system in conformance with state and local health regulations.

Bracken stated that the plan he submitted with the proposed well location is similar with plans previously submitted and that they were not creating any detrimental effect to 40 Squam.

MacNab stated that this is a BOH discussion, not action, item.

Santamaria agreed and stated that the appropriate action for the BOH is to make a "determination" as to if the well will be a drinking or an irrigation well since it is already in place.

McKenna stated he was in favor of moving the well to the yellow area (shown on the map) with a permit for potable water and the existing hole in the ground be used for irrigation.

Bracken suggested that he discuss with his clients about making the hole in the ground an irrigation well and submitting a new revised plan for a well location somewhere in the yellow area.

The consensus of the Board was that they do not want this well as a drinking water well and should remain an irrigation well.

Santamaria offered to have additional discussions with Bracken to have his permit application amended to be only the other well and then this one would be strictly an irrigation well.

Bracken was amenable to Santamaria's offer.

MacNab asked Santamaria if the discussions with Bracken change the well from an irrigation well to a drinking well, to report back to the BOH.

5. Variance Request for Tight Tank at 52 Warren's Landing Road

Sitting: MacNab, Cooper, McKenna, Smith

Documentation: Supporting documents and staff recommendations.

Representative(s) Jeffrey Blackwell, PLS, Agent for Edward V. Lahey, Trustee

Discussion: (5:12)

Santamaria stated that staff has no objection.

Public Comment:

Blackwell stated the tight tank is the best solution on this property to completely eliminate any contribution of nitrates into Madaket Harbor.

Action: **Motion to approve staff's recommendation.** (Motion: Cooper; Second: McKenna)

Roll Call Vote: Carried 4-0//MacNab, Cooper, McKenna, Smith (aye)

6. Variance Request for 227 Madaket Road

Sitting: MacNab, Cooper, McKenna, Smith

Documentation: Supporting documents and staff recommendations.

Representative(s) Donald F. Bracken, Jr., P.E., PLS for Donald E. Walker & Sue Walker

Discussion: (5:12)

Santamaria stated that the variance had been approved in 2021 but has now expired so that variance has to be approved again and that staff has no objection.

Action: **Motion to approve the continuance of the variance.** (Motion: Cooper; Second: Smith)

Roll Call Vote: Carried 4-0//MacNab, Cooper, McKenna, Smith

7. Short Term Rental Article Discussion

Sitting: MacNab, Cooper, McKenna, Smith

Documentation: Supporting documents and staff recommendations.

Representative(s) Donald F. Bracken, Jr., P.E., PLS for Donald E. Walker & Sue Walker

Discussion: (5:15)

Santamaria stated that he reviewed the Short-Term Rental Article, as presented for Town meeting. Santamaria stated that he will be providing comments to the following:

- Section C regarding an attestation form that the owner and operator will be in compliance with all applicable federal, state and local laws. The referenced attestation form has yet to be created. This will be another mandate that will be included in the bylaws and will require the staff to create the attestation forms.
- Under the Certificate of Registration, an application process will also need to be created now that there is a new vendor.
- References to the attestation forms and the application noted above are referenced in the proposal but currently do not exist.
- Section G – states that the Certificate of Registration cannot be transferred if the property is sold or transferred out of ownership. Currently, it is not possible to track transfers in real-time; only able to track on a yearly basis.
- “Short-Term Rentals will be subject to all the requirements except in the event that the unit is bequeathed to another person or another beneficiary through a will or a trust.” Staff has no way of proving that. Same with a deed restricted unit – staff would need to do a deed review with every application.
- No means to track the maximum of 4 weeks per year and therefore, how does it get enforced?
- Article 1 states that the Select Board may designate a Town official or Town Board to grant a waiver for an undue hardship. There is no definition of an “undue hardship.”
- Enforcing this new Article is going to be a burden to the current staffing.

BOH discussion ensued during which they expressed their concerns with the Boards roll and the lack of ability to enforce rules that the BOH cannot enforce. It was also mentioned that, the Department of Health would need a new division to oversee these new regulations.

Santamaria explained that the funds collected would then be available to pay for additional staffing; unfortunately, no funds have been collected.

Action: **Motion to not endorse the Articles as they stand.** (Motion: McKenna; Second: MacNab)

Discussion (5:28):

Smith questioned the motion and stated that the motion should clearly state that the actions in the Article is not within the BOH’s purview.

Santamaria stated that in 2022 it was approved at the Town meeting for the Department of Health.

Further discussion ensued, during which the Board expressed their concerns with the lack of ability to enforce the amendments to Article 1.

Roll Call Vote: Failed 2-2//MacNab, McKenna (aye) Smith, Cooper (no).

8. Ratify Emergency Condemnation of Attic at 44 Union Street

Sitting: MacNab, Cooper, McKenna, Smith

Documentation: Supporting documents and staff recommendations.

Representative(s) None

Discussion: (5:34:30)

Santamaria provided an overview of the item.

Action: **Motion to ratify the condemnation. (Motion: Cooper; Second: McKenna)**

Roll Call Vote: Carried 4-0//MacNab, Cooper, McKenna, Smith

9. Fire Fighter Report Discussion

Sitting: MacNab, Cooper, McKenna, Smith

Documentation: Draft Letter

Representative(s) None

Discussion: (5:35:30)

MacNab provided an overview of the research he conducted using peer review literature on the exposures of fireman following last month's report. He stated that research has shown that fire fighters have a higher risk of cancer and cardiovascular disease than the average citizen. MacNab also mentioned in the draft letter that there is a program available from the National Firefighters Association that suggests particular cancer screenings and physical exams.

BOH discussion ensued during which they made additional modifications to the draft letter. Once the final letter is completed and signed by all BOH Members, it will be submitted to the Town Manager and Fire Chief for consideration.

10. Update from Public Health Nurse Regarding the COVID Vaccinations

Sitting: MacNab, Cooper, McKenna, Smith

Documentation:

Representative: Erin Schrader, Public Health Nurse

Discussion: (5:49:04)

Schrader announced that the clinic will be opened on Saturday, October 21st and that there are still appointments available for the November 18th clinic. There are also various resources to get the COVID vaccine.

V. ADDITIONAL DOCUMENTS USED

1. Draft BOH Minutes September 21, 2023

VI. ADJOURN

Action: **Motion to Adjourn at 5:54 pm.** (Motion by: McKenna) (Seconded by: Cooper)

Roll Call Vote: Carried 4-0//McKenna, Cooper, Smith and MacNab-aye

Submitted by:

Elaina Cano