



BOARD OF HEALTH

~~ MINUTES ~~

Thursday, June 20, 2024

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: John Hedden, Chief Environmental Health Officer; Heather Nardone, Public Health Inspector; Tomeka Gary, Public Health Coordinator
Attending Members: Malcom MacNab Meredith Lepore, James Cooper, Ann Smith
Remote Participant: Kerry McKenna
Absent: -
Early Departure: MacNab left the meeting at 5:42 pm.

I. ANNOUNCEMENTS

Chair MacNab announced that this meeting is being audio and video recorded

II. PUBLIC COMMENTS

Public Comment:	Bob Goldger - Reported seeing a large hill of sand next to the shops under construction and noted that - children were seen climbing it, raising potential safety concerns. MacNab - Acknowledged awareness of the sand hill and stated that the PLUS department has taken action. - Notified the police due to safety concerns. - Clarified that while it may not be an official Board of Health issue, it has been reported and the town is addressing it.
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III. APPROVAL OF MINUTES

Action:	Motion to approve the minutes of May 2, 2024, as amended, to show that Dr. MacNab was present. (Motion by: Cooper) (Seconded by: Smith)
Roll-Call Vote:	Carried 5-0// Cooper, Lepore, Smith, McKenna, MacNab
Action:	Motion to approve the minutes of May 16, 2024, as submitted (Motion by: Cooper) (Seconded by: Smith)
Roll-Call Vote:	Carried 5-0// Cooper, Lepore, Smith, McKenna, MacNab

IV. DISCUSSION OF 2024 TOWN WARRANT ARTICLE 3 REGARDING POSSIBLE HEALTH ISSUES WITH AIRPORT EXPANSION

Sitting:	MacNab, Cooper, Lepore, Smith, McKenna
Recused:	Lepore
Discussion:	John Giorgio, Town Counsel , provided the following update and responded to Board Member's questions: - Explained that there are two levels of concern regarding regulation at the federal level under the Federal Aviation Act, where airports are comprehensively regulated by the FAA. - Highlighted the federal preemption doctrine, which states that comprehensive FAA regulations intend to occupy the field, limiting local authority over aircraft movement. - Mentioned discussions about requiring private jets to be towed in and out to reduce air pollution, which is beyond the Board of Health's regulatory authority.

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	- Detailed that environmental laws, specifically CERCLA (Comprehensive Environmental Response, Compensation, and Liability Act), regulate the treatment and disposal of hazardous materials, like PFAS, under the EPA's jurisdiction. - Cited federal cases indicating local boards cannot regulate these areas due to federal preemption. - Discussed state-level concerns, noting Massachusetts Aviation Act's comprehensive regulation in conjunction with the FAA, also preempting local authority. - Summarized that the Board of Health has limited regulatory room but can play an advisory role. - Encouraged the Board to express concerns to the Airport Commission through correspondence, emphasizing their advisory rather than regulatory capacity. - Clarified that there is no specific provision in state law regulating aircraft noise, though air pollution is addressed. - Noted that the Board of Health has authority under Chapter 111, Section 122, to investigate nuisances, including noise. - Highlighted the limitations due to state and federal preemption doctrines. - Concluded that the Board of Health cannot independently adopt noise regulations but can voice concerns to the DEP and FAA based on public comments and investigations. - Recommended requesting a joint meeting with the Airport Commission to openly share comments and concerns.
Public Comment:	Mary Lepore - Expressed concern as a neighbor about the use of land zoned as residential for parking private jets, noting that Article 49 did not pass. - Compared the outdated and harmful practices of the past, like smoking and using opium for teething, to the current situation, stressing that the land is now next to residential areas. - Criticized the airport for not relocating the project to the other side, which would have been more work but possible. - Highlighted that the community has been exposed to PFAS, with residents experiencing health issues, including cancer. - Recalled that the airport initially agreed to tow jets but later changed their stance. - Described frequent early morning truck noise, indicating ongoing disruptions. - Emphasized the importance of maintaining stipulations for airport funding to ensure honesty and protect the community, noting the airport's history of not prioritizing the community's well-being. - Warned about the risks of PFAS-contaminated dirt being dumped in the sandpit, potentially affecting the aquifer and town water, leading to serious health issues like childhood leukemia, thyroid cancer, liver cancer, and testicular cancer. - Voiced concerns about noise, smell, and ongoing contamination from the airport's activities. Arthur Gasbarro, Airport Commission Chairperson - Addressed the board to emphasize the airport commission's receptiveness and tireless work on PFAS mitigation, waterline extensions, POET systems, and filter systems. - Highlighted that commission members live in the community and understand the concerns. - Acknowledged the restrictions on how airport revenue can be spent and shared personal experience as a former chairman of the noise advisory committee, stressing the complexities due to FAA regulations and grant assurances. - Explained that the ramp expansion project aims to better handle existing corporate jet

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	traffic, including installing cameras and noise monitoring stations, with efforts to reduce noise and emissions while maintaining safe airport operations. - Invited input from the Board of Health and welcomed joint meetings or correspondence to address concerns. - Noted that the airport's federal mandate required the use of PFAS in firefighting operations, and current efforts focus on mitigation through waterline installations and continued connections. Meghan Perry - Asked if the Board of Health can enforce stricter regulations regarding health concerns related to the airport, similar to their stricter COVID-19 measures. - Expressed concerns about the lack of enforcement, particularly with construction vehicles operating at 5:00 a.m., and noted that construction in other areas, like Sconset, does not start until 7:00 a.m. - Asserted that local year-round residents should receive the same consideration. - Suggested that the Board of Health be involved in the grant application process, as rejecting certain grants might avoid health concerns tied to grant conditions. - Proposed that the Board of Health advise the Airport Commission on health-related matters when applying for grants to prevent situations where the airport feels compelled to follow potentially harmful regulations due to grant acceptance. McKenna - Agreed that it would be beneficial to take advantage of the direct invitation for a joint meeting or discussion. - Noted the importance of clarifying realities versus misconceptions and understanding the limits of the Board of Health's authority over federal land. - Emphasized the value of open dialogue between the Board of Health and the Airport Commission for future learning and improved collaboration. Gasbarro - Suggested starting with a letter outlining specific questions and concerns before scheduling a meeting to address them. - Offered this approach as a way to be efficient with everyone's time, especially heading into summer, while ensuring the responses are documented and publicly accessible. MacNab - Expressed the desire for the Board of Health to be more involved in public discussions and consultations on health issues, even if they cannot regulate them. - Emphasized the importance of reviewing all warrants at Town Meetings beforehand to provide comments on relevant health issues. - Clarified that the Board will comment on matters that involve health concerns, but not on zoning issues unless they directly affect health.
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VI. CONDEMNATION OF DWELLING AT 5 SANDPLAIN DRIVE. MAP: 68 PARCEL: 349

Sitting:	MacNab, Cooper, Lepore, Smith, McKenna
Documentation:	Supporting documents and staff recommendations.
Discussion: (00:36:36)	Hedden reported receiving a complaint about a sewage breakout on the property. - Responded to find that the building sewer pipe from the house had been cut due to construction work on a neighboring property. - Ordered the pipe to be capped, but the planning issues between the buildings and existing sewer locations left the house without a functioning sanitary sewer system. - Condemned the house initially based on this issue. - Conducted further inspections and found additional violations, including mattresses in an

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	unfinished basement and non-functioning smoke detectors needing updates. - Stressed that the lack of a sewer system was the primary reason for condemnation. - Confirmed the building is now secured and uninhabited. - Unclear whether the damaging work was done under permit, as the situation involves town sewer on both properties. - Noted that the building is expected to be demolished in the coming months and was likely being used temporarily to house workers. - Addressed the complaint promptly and acknowledged the poor situation
Action:	Motion to approve the condemnation at 5 Sandplain Drive. (Motion by: Smith) (Seconded by: Cooper)
Roll-Call Vote:	Carried 5-0// MacNab, Cooper, Lepore, Smith, McKenna (aye)

V. SEPTIC LOAN REQUEST-10 POLLIWOG POND ROAD

Sitting:	MacNab, Cooper, Lepore, Smith, McKenna
Documentation:	Supporting documents and staff recommendations.
Discussion: (00:40:23)	Hedden provided an overview and responded to questions. - Discussed a septic to sewer conversion scenario on Polliwog Pond Road. - Noted that there are no issues with the conversion. - Confirmed that similar conversions have been approved many times in the past and that it involves a local family. McKenna - Addressed concerns about the public availability of forms filled out for agenda items, specifically noting that personal information such as motor vehicle license numbers should be protected. MacNab - Agreed that the Health Department will redact such information before publishing in the future.
Action:	Motion to approve the septic loan request for 10 Polliwog Pond Road. (Motion by: Lepore) (Seconded by: Cooper)
Roll-Call Vote:	Carried 5-0// MacNab, Cooper, Lepore, Smith, McKenna (aye)

VII. LOCAL UPGRADE APPROVAL/ABUTTERS NOTIFICATION- 23 CLARENDON STREET

Sitting:	MacNab, Cooper, Lepore, Smith, McKenna
Documentation:	Supporting documents and staff recommendations.
Discussion: (00:42:46)	Paul Santos, Nantucket Surveyors, provided an overview and responded to questions. - Presented a local upgrade approval request under local and state regulations that require Board approval due to a setback reduction request. Explained that normally staff can approve such upgrades, but any reduction in property line setbacks necessitates notifying affected abutters at least 10 days prior to a public hearing. - Outlined that the upgrade is for a pre-1995 septic system in Tom Nevers, which will be brought into compliance regarding appropriate sizing and septic tank size. - Highlighted the constraints posed by well locations in Tom Nevers but confirmed that all 100-foot setbacks to private wells will be respected. - Specified the request for a reduction in the setback from the property line from 10 feet to 5 feet. Detailed communication with three affected abutters: 1. Power Landscaping Inc. (Frank Powers) to the north, who had a similar request in the past. 2. Olivia Prouty Gill to the west, who has not reached out or expressed concerns.

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	3. Susan Petty and Roland Fry at 30 Dartman Street to the west, who requested an impervious barrier along their property line, which has been agreed upon. - Concluded that the purpose of the hearing is to meet the state requirement for notifying abutters and allowing them to voice their opinions, with staff conducting a full review and aiming for system approval. - Pointed out that there are two wells clustered together, with the property's well to the north and the abutting well to the south. - Highlighted that all circular radii for the wells have been respected, ensuring the 100-foot setback from both the property's well and all abutting wells in the area. - Confirmed that the system will be placed in the open area that adheres to these setbacks. Hedden - Stated no concerns.
Action:	Motion to approve the Abutters Notification for 23 Clarendon Street. (Motion by: McKenna) (Seconded by: Cooper)
Roll-Call Vote:	Carried 5-0// MacNab, Cooper, Lepore, Smith, McKenna (aye)

VII. VARIANCE REQUESTS

1. Variance request for shared septic system at 190, 192, and 194 Hummock Pond Road

Sitting:	MacNab, Cooper, Lepore, Smith, McKenna
Documentation:	Supporting documents and staff recommendations.
Discussion: (00:47:50)	Jeff Blackwell, Blackwell & Associates, Inc. provided an overview and responded to questions. - Summarized the history of a shared system approval request made in December 2023. Initially, no variance was deemed necessary, and the design for 190, 192, and 194 Polliwog Pond Road was approved. Construction of a modular home at 190 began. - Later, the Health Department required a variance, as individual septic systems were not feasible due to poor soil conditions. Highlighted that the variance is needed to: 1. Avoid manifest injustice: Denial would be unfair after construction. 2. Ensure environmental protection: The shared system meets Title 5 standards. 3. Maintain beneficial use: Denial would render the new house uninhabitable. - Requested the Board grant the variance, given the compliance and circumstances. Hedden - Clarified that confusion arose because all three lots are owned by the same person, with one lot in a trust. Stated that a shared system typically wouldn't be required if the same owner owns all properties. - Noted that two houses exist, and one is being built on 190 Polliwog Pond Road, with poor soil conditions confirmed by multiple percolation tests. - Confirmed that the lots are large enough to accommodate the shared leech field, and the design complies with Title 5 standards. - Mentioned that financial mechanisms and easements would be needed for maintenance if the properties are sold, ensuring new owners share costs. - Highlighted that the required documents have been supplied and will be corrected and signed.
Action:	Motion to approve the variance request. (Motion by: Smith) (Seconded by: Cooper)
Roll-Call Vote:	Carried 5-0// MacNab, Cooper, Lepore, Smith, McKenna (aye)

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2. Variance request for Installation of a seasonal use of tight tank at 334 Madaket

Sitting:	MacNab, Cooper, Lepore, Smith, McKenna Road
Documentation:	Supporting documents and staff recommendations.
Discussion: (01:05:57)	Arthur Gasbarro, Nantucket Engineering & Survey, Agent for Candice McDonough & Scott Kurland, provided an overview and responded to questions. - Described the property at the end of Madaket Road experiencing erosion and seeking to install a tight tank of equivalent capacity under the seasonal use provision of Title 5. - Confirmed full compliance with Title 5 and noted that approval from the authority is required, hence bringing the matter to the board. - Explained that there is no increase in capacity and that both zoning board and Conservation Commission approvals have been obtained to move structures away from the eroding coastal bank. - Highlighted that the tight tank will be placed as far from the bank as possible to avoid compromising the existing septic system. Hedden - Noted that the board has approved similar situations in the past, where houses are moved back from the bank and a tight tank is installed to extend the usability of the property. - Confirmed that this approach aims to get a few more years out of the house by addressing the erosion issue.
Action:	Motion to approve the variance request for the installation of a seasonal use a of tight tank at 334 Madaket Road. (Motion by: McKenna) (Seconded by: Cooper)
Roll-Call Vote:	Carried 5-0// MacNab, Cooper, Lepore, Smith, McKenna (aye)

3. Variance request for Upgrade Approval/ Septic setbacks at 17 Sesachacha Rd

Sitting:	MacNab, Cooper, Lepore, Smith, McKenna
Documentation:	Supporting documents and staff recommendations.
Discussion: (01:09:13)	Don Bracken, Bracken Engineering, for the applicant provided an overview and responded to questions. - Discussed a challenging septic system upgrade for a two-bedroom house on a site with numerous constraints, including abutting Sesachacha Pond, a nitrogen-sensitive area, and various resource areas like coastal dunes and flood zones. - Highlighted that the existing septic system includes a tank, a chamber, and a leeching pit. Proposed relocating the leeching trench to a narrow flat area in the northwest corner of the property and moving the well to the east side to achieve a 100-foot separation from the new leeching trench. - Requested several variances: 1. Wetland Setback: 7 feet from the Coastal Bank and 64 feet from the coastal dune instead of the required 100 feet. 2. Nitrogen-Sensitive Area: Unable to meet the 300-foot pond setback but the new system is an improvement over existing conditions. 3. Property Line and Road Setbacks: One-foot setback from the road and 5 feet from a vacant town-owned lot instead of the required 10 feet. 4. Leeching Trench Size: Reduction by 25% using an IA system due to space constraints. - Summarized that the proposed solution is a significant improvement over the existing non-compliant system, considering the site constraints and ensuring better environmental protection. - Explained the proposed dewatering system in the southwest corner, required due to the

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	high groundwater level where the septic tanks will be installed. - Clarified that the dewatering system involves using wells to pump out groundwater, which is then directed into a large, porous bag (a dewatering bag). - Detailed that the groundwater pumped into the bag seeps out over a larger area, allowing for the septic tanks to be installed below the water table by lowering the water level temporarily. - Mentioned that multiple wells might be needed to effectively manage the groundwater level during the installation process. Hedden - Acknowledged the site is very restrictive and challenging. - Noted that the current septic systems have failed. - Agreed that the proposed solution, with the leech field as far from the pond as possible and located near the street, is the best option given the constraints.
Action:	Motion to accept the variance requests, as outlined in the application. (Motion by: Cooper) (Seconded by: Lepore)
Roll-Call Vote:	Carried 5-0// MacNab, Cooper, Lepore, Smith, McKenna (aye)

IX. DETERMINATION ON DISPOSAL SYSTEM CONSTRUCTION PERMIT FOR 9 NEW JERSEY AVENUE

Sitting:	MacNab, Cooper, Lepore, Smith, McKenna
Documentation:	Supporting documents and staff recommendations.
Discussion:	Hedden provided an overview and responded to questions. - Outlined the applicant's proposal to relocate a two-bedroom dwelling and construct a new four-bedroom dwelling on the property in the Madaket Tight Tank District. - Mentioned that the property currently has a four-bedroom I/A system, which would need to be relocated for the new construction. - Stated that the board needs to decide whether to allow the relocation of the current I/A system to accommodate new construction or deny the application. - Recommended denying the application to remain consistent with previous decisions requiring properties in the district to install tight tank systems. - Noted that Title 5 and local regulations do not allow new construction on a tight tank, emphasizing the importance of upholding these regulations. Applicant/Representative - Clarified that the proposal includes relocating the existing I/A tanks and soil absorption system to fully comply with Title 5, rather than keeping the existing system which is currently a foot off the property line. - Confirmed that the current two-bedroom house has a four-bedroom septic design approved in 2006, effectively grandfathering it for four bedrooms. - Explained that the new design aims to meet all setback requirements, including 150 feet to property lines and wells, and complies with all Title 5 and local regulations. - Highlighted that the term "may require a tight tank" in the Board of Health regulations is typically interpreted as applicable when no compliant system can be achieved. - Requested the board to consider allowing the relocation and upgrade of the current I/A system to accommodate the new construction, noting that the proposed design meets all compliance standards. Arthur Reade, Representative for the Applicant - Highlighted that the tight tank regulation primarily addresses circumstances where a system needs to be replaced due to failure.

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- Clarified that this situation involves a functioning, permitted I/A system.
- Requested approval to relocate the existing I/A system on the property in a way that is more compliant with current regulations.
- Argued that since there is no failure necessitating replacement, the tight tank regulation may not apply.
- Proposed that the application be approved to allow for the relocation of the I/A system, enhancing compliance without needing a tight tank.

Hedden

- Noted that Jeff Carlson, Natural Resources Director, supports the effort to get everything on a tight tank in the area.
- Acknowledged that requiring all properties to use tight tanks effectively restricts new construction in the area, creating a challenging situation.
- Highlighted the complexity of balancing compliance with regulations and allowing reasonable property development.
- Emphasized the need for a careful decision on whether to permit the relocation of the existing I/A system or mandate a tight tank, considering the broader implications for future construction in the district.

Reade

- Emphasized that the language of the regulation pertains to situations where an I/A system needs to be replaced due to failure.
- Argued that this does not apply here since the existing I/A system is functioning and does not require replacement.
- Highlighted that the regulation uses "may" instead of "shall," giving the board discretion.
- Requested approval for the relocation based on the fact that the current system is duly approved and not failing, making the regulation inapplicable in this scenario.

Smith

- Questioned the purpose of replacing a fully functional IA four-bedroom system.

MacNab

- Acknowledged that while there is a desire from both the Board and the Conservation group to have tight tanks in the area, the current regulations only mandate tight tanks for systems that require replacement due to failure.
- Clarified that since the existing IA system is functioning, the regulations as written do not apply to this situation.
- Noted that the property owner is legally allowed to proceed with the relocation and construction plans under the existing regulations, despite the Board's preference for tight tanks.
- Suggested that to enforce the preference for tight tanks, the regulations would need to be revised.

Applicant/Representative

- Clarified that the purpose of relocating the functioning IA system is due to plans to demolish the existing structure and build a new one.
- Explained that the current septic tanks are in the location where the new structure will be built, necessitating their relocation.
- Noted that while the soil absorption system could technically remain, the decision was made to replace it, despite it being 18 years old, to ensure compliance and upgrade the system along with the new construction.
- Confirmed that the relocation is driven by the construction needs rather than any failure of the existing system.

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	Hedden - Noted that in 2015, the DEP approved the incorporation of the area into the tight tank district due to nitrogen loading concerns. - Explained that Title 5 and local regulations do not allow tight tanks for new construction or increases in design flow. - Highlighted that going from a two-bedroom to a four-bedroom dwelling constitutes an increase in actual flow, which complicates approval. - Clarified that while the current regulation provides the Board of Health with flexibility to allow certain actions, it also permits the Board to require properties to use tight tanks in this area. - Summarized that although tight tanks are recommended, not mandated, the increase in flow makes it challenging for the Board to approve the proposed construction without adhering to the tight tank recommendation. Lepore - Acknowledged concerns about the area's erosion, particularly over the bridge, and the potential need for a tight tank in the future. - Emphasized that while the new system is designed to be compliant, the long-term erosion risks remain a valid consideration. Cooper - Clarified that the existing system has not failed, making the tight tank requirement inapplicable under current regulations. - Noted that since the system is functioning properly, the property owner is allowed to relocate and upgrade the system for the new construction without mandating a tight tank. - Suggested including a condition that the new IA system is limited to supporting a maximum of four bedrooms, preventing any future increases in the system's capacity. - Clarified that this condition would ensure the property cannot be expanded to accommodate additional bedrooms beyond the approved four-bedroom system.
Action:	Motion to approve the application. (Motion by: Cooper) (Seconded by: MacNab) (01:40:25)
Roll-Call Vote:	Carried 3-1-1 // MacNab, Cooper, Smith, (aye) // McKenna (nay) // Lepore (abstain)

DIRECTORS REPORT

Discussion:	Hedden - Mentioned that the July meeting will include a public hearing on proposed changes to the tight tank policy regulation, advertised in the paper for the next four weeks. - Noted the upcoming joint PFAS meeting with the Select Board on June 25th at 4:00 PM at 131 Pleasant Street. - Provided an update on short-term rental applications, highlighting an increase in applications but emphasizing the need for more submissions to keep records updated. - Observed an uptick in real estate professionals collecting PFAS samples for various properties over the past two months, indicating increased awareness and action. - Expressed anticipation for a full staff, allowing for dedicated focus on various important topics currently facing the community.
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ADJOURN

Action: Motion to Adjourn at 5:48 pm. (made by: McKenna) (seconded by: Cooper)
Roll-call vote: Carried 4-0// Cooper, Lepore, Smith, McKenna (aye)
Submitted by: Elaina Cano1