



# BOARD OF HEALTH

Town of Nantucket  
16 Broad Street  
Nantucket, Massachusetts 02554  
[www.nantucket-ma.gov](http://www.nantucket-ma.gov)

**Commissioners:** Malcolm MacNab, MD, PHD, (chair), James Cooper (Vice chair), Helene Weld, RN, Stephen Visco, Rick Atherton

**Staff:** Roberto Santamaria, Artell Crowley, Kathy Lafavre, Anne Barrett

~~ MINUTES ~~

**Thursday, February 18, 2016**

4 Fairgrounds Road, Community Room – 4:00 pm

Called to order at 4:01 p.m.

Staff in attendance: R. Santamaria, Health Director; A. Crowley, Assistant Health Director; K. LaFavre, Health Inspector; T. Norton, Town Minutes Taker

Attending Members: Malcolm MacNab, MD, PHD; James Cooper; Stephen Visco; Rick Atherton, Board of Selectmen

Absent Members: Helene Weld, RN

Agenda adopted as amended by unanimous consent

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

1. **Chris Witte** – Requested that Dukes Road sewer issues be put on the next BOH agenda.

## II. ANNOUNCEMENTS

1. None

## III. REVIEW/APPROVAL OF MINUTES

1. January 21, 2016 – Approved by unanimous consent

## XI. FERTILIZER PUBLIC HEARING

Sitting MacNab, Cooper, Visco, Atherton

Recused None

Documentation Supporting documents and plans, staff recommendations.

Discussion **Santamaria** – Reviewed discussion from last meeting and progress made since then. Town Counsel has looked at the regulations: any future changes cannot be made by BOH; must be made by NP&EDC who have the authority to change regulations. The issue with this regulation is enforcement; there are no changes proposed.

Public Hearing open 4:09 p.m.

**Michael Misurelli**, J&M Landscape Services – The form for interest in the advisory was posted on Town website, which isn't his go-to place. Noted that Natural Resources and Nantucket Land Counsel have lists of landscapers.

**MacNab** – Asked for comments on enforcement.

**Chuck Brownhall**, fertilizer representative – He supports the regulations. He feels that enforcement would be best accomplished through education to include the enforcement officers; he would be willing to educate those who are doing enforcement.

**Lee Saperstein** – Feels Mr. Brownhall's comment is right on; we also need to educate the citizenry so they know what is the right thing to do. The Article 68 Workgroup provided a 2-page draft of suggestions to include a card that has a 3-inch measure on it, which is recommended cutting length along with a gauge to put in the soil to ascertain how deep it has

been watered. The regulations were written to be one-size fits all while the best management practices, which allows the regulations to be tailored to the property.

**MacNab** – The advisory committee can go forward without a conclusion to the public hearing. Suggested not closing the public hearing at this time.

**Public Hearing continued to March**

#### IV. WAIVER REQUEST

1. 43 Millbrook Road – Local Regulations 55.03 and 64.03 C2

Sitting MacNab, Cooper, Visco, Atherton

Recused None

Documentation Supporting documents and plans, staff recommendations.

Discussion (4:16) **Santamaria** – Separation from ground water caused a technical failure; the as-built data shows separation at 5.95 feet; separation in theory is off less than 1 each. A question on policy for the workshop is should we do a rounding after a certain level or go only with the groundwater map.

**Cooper** – He feels when you get to .95 you should round up. Do we have to put something in writing for the surrounding areas.

**Crowley** – He did soil evaluation on both sides of the property; asked, if it is going to be granted, there be a soil evaluation to confirm the groundwater.

**Cooper** – Asked if this is approved, does there have to be something in writing about the 5.95 in the surrounding area.

**Santamaria** – Pointed out that everything property is case-by-case.

Action **Motion to Approve.** (made by: Cooper) (seconded by: Atherton)

Vote Carried unanimously

#### V. COMMENTS ON COMPREHENSIVE PERMIT 106 SURFSIDE REALTY TRUST 40B

Sitting MacNab, Cooper, Visco, Atherton

Recused None

Documentation Supporting documents and plans, staff recommendations.

Discussion (4:21) **MacNab** – The Zoning Board of Appeals has asked for comments on the 40B development proposed at 106 Surfside Road. Reviewed a draft letter stating that the BOH has no jurisdiction as long as they follow all the rules and regulations from a Health Department point of view.

**Cooper** – Feels the letter should state the BOH has no jurisdiction.

**Atherton** – Agrees.

#### VI. PERMIT REVIEW

1. 9 Massachusetts Avenue, M/P 60-83 – Permit 93-11

Sitting MacNab, Cooper, Visco, Atherton

Recused None

Documentation Supporting documents and plans, staff recommendations.

Discussion (4:24) **Santamaria** – This permit is for a property that was approved for an I/A system, which is not in the ground; however the property is now part of the Tight Tank District. Asked whether or not the permit should be allowed or revoked.

**Atherton** – It is not a financial burden to change; asked if Santa could call the owner and talk to them.

**Santamaria** – The time on the permit is running out.

**MacNab** – Asked Mr. Santamaria to give them a call or send a letter explaining that the permit is no longer valid and a tight tank permit will have to be procured.

Action No action at this time.

Vote N/A

## VII. VARIANCE REQUESTS

1. 6 Washington Avenue, M/P 60.2.4-66 – Tight Tank

Sitting MacNab, Cooper, Visco, Atherton

Recused None

Documentation Supporting documents and plans, staff recommendations.

Discussion (4:27) **Santamaria** – the composting toilet has been put in but been having permit issues; asking for a tight tank instead of a second composting toilet.

**Don Bracken**, Bracken Engineering, Inc. – Asked for a variance to Title 5; for a tight tank it has been demonstrated there is no feasible alternative. Noted the benefits to a tight tank. A composting system is a feasible alternative; however, the property is in Madaket Harbor Watershed.

**Cooper** – Asked about system in the other structure.

**Bracken** – It does work though it is not meeting expectations.

**Cooper** – If a compost system works, doesn't understand why they are asking for a tight tank.

**Bracken** – The owner believes this would be the best option for them and for water quality.

**Visco** – Tight tanks are not for new construction; that house was moved there and the only way they could get that house there was the deal that was cut with Department of Environmental Protection (DEP) for the current system. Grant a variance and a can of worms would be opened. He doesn't understand how the DEP allowed this.

**Bracken** – Explained how the applicant got DEP and Town approval. He doesn't think granting the variance would set precedent.

**Cooper** – If the system as drawn can be constructed and it will work it should be put in.

**Bracken** – Thinks it is a win-win for both the Town and the owner.

**Gail Greenwald**, owner – They did put the compost system into structure that was moved to site; that is for seasonal use. This is for the year-round home. Explained some issues they have run into with the composting system in the seasonal home.

**MacNab** – He can see the benefit to the harbor.

**Bracken** – They had to prove a 4-bedroom system would fit on the property and that system is still on the plan. Sewer is closer to coming to Madaket than when the permit was originally applied for.

Discussion about how the lot was approved for a 4-bedroom system.

**MacNab** – Asked whether or not granting the relief would set precedent.

**Crowley** – Believes it would.

**Santamaria** – This is the only case in which this has happened; however, the board would still have to take each request case-by-case.

**Greenwald** – They are keeping the current system running in the seasonal house but don't believe it can be kept working in a year-round residence. The conditions are different than expected and cause a grave concern for a year-round residence.

**Santamaria** – Tight tanks are approved for year-round use.

Action **Motion to Deny the waiver.** (made by: Cooper) (seconded by: Visco)

Vote Carried 3-1//Chair opposed

## VIII. REQUEST FOR RELIEF

1. From Local Regulation 55.03 for 21 Crooked Lane, M/P 41-480 (partially in Hummock B)  
Sitting MacNab, Visco, Atherton  
Recused Cooper  
Documentation Supporting documents and plans, staff recommendations.  
Discussion (4:46) **Santamaria** – The system is 200 feet away from the Hummock Pond B Zone.  
**Billy Cassidy**, owner – Asking for relief from the inspection; the portion of the property within Zone B might not be under his ownership any longer.  
Action **Motion to Approve the waiver.** (made by: Visco) (seconded by: Atherton)  
Vote Carried 3-0

## IX. ADMINISTRATIVE CONSENT ORDER (ACO) REQUEST

1. 255 Madaket Road, M/P 59.4-265 – Technical failure
  2. 324 Madaket Road, M/P 60.2.4-82
  3. 326 Madaket Road, M/P 60-104
- Sitting MacNab, Cooper, Visco, Atherton  
Recused None  
Documentation Supporting documents and plans, staff recommendations.  
Discussion (4:49) **Santamaria** – This is straight forward.  
Action **Motion to Approve all three ACO requests.** (made by: Visco) (seconded by: Cooper)  
Vote Carried unanimously

## X. CONDEMNATIONS

1. 4 Kinikinnik Way M/P 80-419 – Emergency Condemnation  
Sitting MacNab, Cooper, Visco, Atherton  
Recused None  
Documentation Supporting documents and plans, staff recommendations.  
Discussion (4:51) **Santamaria** – There was a fire at the property. They had an illegal basement apartment with definite over-crowding issues. The property is allowed 3 bedrooms and there were 6. This condemnation would be for the whole property until repairs are made; condemnation for the basement apartment in perpetuity.  
Action **Motion to Approve the condemnation.** (made by: Atherton) (seconded by: Cooper)  
Vote Carried unanimously
2. 13 Chatham Road (aka 8 Polpis Road) M/P 54-125  
Sitting MacNab, Cooper, Weld, Visco, Atherton  
Recused None  
Documentation Supporting documents and plans, staff recommendations.  
Discussion (4:53) **Santamaria** – There are two bedrooms in the basement; a joint inspection with the Fire Department found several violations with code. He is asking that the two basement bedrooms be condemned in perpetuity.  
Action **Motion to Approve the condemnation.** (made by: Atherton) (seconded by: Visco)  
Vote Carried unanimously

**XII. DIRECTOR'S REPORT** (4:55)

1. There have been a lot of questions about the Zika outbreak and fears due to the mosquito population. Those types mosquitoes aren't found here. Information suggests no other mosquitoes carry that virus. Education is the best defense for people who might visit countries with those diseases.
2. Following up with sewer questions regarding the capacity of sewer and private sewer lines that were adopted by the Town. He, the Director of the Department of Public Works, and the Town Manager will draft a document on sewer takings; there is a lot of misinformation. That document should be ready within 30 days. The Town Manager has suggested that BOH have a meeting to explain how the regulations came about and the application of variances.
3. Asked if the Board wants to stick to 6-foot separation from groundwater and all waivers are to come to the Board or allow the director to grant a certain fraction of a foot. Board members expressed their opinions. Final decision: Continue coming to the Board.
4. Asked for guidance on septic systems outside Zones A and B; should a buffer be set that states more than 10 feet outside the Zone do they come in for variance or decide in the office. Final decision: As long as the system is significantly outside the zone, Staff can use good judgment based upon the guidelines.
5. Sewer connection: no one has exercised a right to the variance yet; however, he has received a lot of letters asking about it. On the application for the variance request, a portion of the regulation says no variance will be granted for environmentally sensitive areas but also says a variance can be considered for on-site disposal systems that are 5 years or less before sewer is installed. They can legally apply for variance, but regulations say a variance won't be granted. Asked for guidance. Discussion among Board members about areas where this might apply. Crowley – Stated that this Board voted on Zone A that there would be no exemptions from 1 bedroom per 10,000 square feet; however, the Board did not vote on Zone B. Decision: If within the Zone with I/A, get what's pre-existing.
6. The last question is whether or not to allow bedroom credit with I/A in Zone B. Discussion on whether or not to allow variances in Zone B as for Madaket/Fisher's Landing area. Final decision: No change.
7. Atherton – Asked what should be done about increased roof and hard-surface runoff; to him it isn't different than storm runoff. Santamaria – Some states are mandating rainwater catch basins.
8. MacNab – The board should start thinking about herbicide use. It affects water quality.

Motion to Adjourn: 5:30 p.m.

Submitted by:  
Terry L. Norton