

BOARD OF HEALTH

Meeting

Town of Nantucket

3 East Chestnut Street

Nantucket, Massachusetts 02554

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, Hank Ross, Anne Barrett

~~ MINUTES ~~

Thursday, July 21 2016

4 Fairgrounds Road, Community Room – 4:00 pm

Called to order at 4:00 p.m.

Staff in attendance: R. Santamaria, Health Director; A. Crowley, Assistant Health Director; Kathy LaFavre & Hank Ross, Health Inspectors; T. Norton, Town Minutes Taker

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

Absent Members: None

Early Departure: Atherton, 5:35 p.m.

Agenda adopted by unanimous consent

I. ANNOUNCEMENTS

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

1. None

III. ELECTION OF OFFICERS

1. Chair: Cooper nominated Malcolm MacNab: accepted by unanimous consent.
2. Vice Chair: MacNab nominated Stephen Visco: accepted by unanimous consent.

IV. APPROVAL OF MINUTES

1. June 16, 2016: Approved by unanimous consent.

V. BOH APPLICATIONS REVIEW

1. Surrogate Sampling Point for Cliffside Beach Club

Sitting MacNab, Cooper, Weld, Visco, Atherton

Recused None

Documentation Supporting documents and plans, staff recommendations.

Discussion **Santamaria** – Need approval by the Board to allow the Beach Club to use the Health Department sample, which is directly adjacent to the club, as a surrogate rather than two samples 20 feet apart.

Action **Motion to Approve Cliffside Beach Club use of Health Department water sample as a surrogate.** (made by: Weld) (seconded by: Cooper)

Vote Carried unanimously

2. Variance to 64.07 Weinman & McLaughlin 280/282/284 Polpis Road

Sitting MacNab, Cooper, Weld, Atherton

Recused Visco

Documentation Supporting documents and plans, staff recommendations.

Discussion (4:05) **Rhoda Weinman** – Asked for variance hearing to be continued to the September meeting; the Board had wanted to see if other variance requests came from other who received the letter that went out over a month ago. When she last checked with the Health Department, there had been none. Noted that only two properties have lots than hers; most lots have less than 5-foot separation, which is what she's asking for. She is representing that only two people live at this property. She is asking to have it deferred until such time as the property is put on the market. According to the regulations, on her properties, she can have up to 36 bedrooms, but there is only one.

Atherton – Asked if there is a time limit on variance requests.

Santamaria – The deadline is September 1, 2016; at that time a new system must be installed or the property is out of compliance.

MacNab – Noted that all the residents in this area can request a variance based upon unique situations. Asked if Ms Weinman would accept a deferral in order to drill an observation hole to establish whether or not there actually is a technical failure.

Weiman – Not sure about that at this time.

Cooper – The system has failed; to him it's simple.

Santamaria – Noted that it is in technical failure, not hydraulic failure.

Weinman – She is willing to continue for an observation hole.

Action **Motion to Continue until the September 2016 meeting pending the results of an observation hole.** (made by: Atherton) (seconded by: Weld)

Vote Carried unanimously

3. Variance from Local BOH Regulation 64-07 for 34 Brewster Road M/P 54-288

Sitting MacNab, Cooper, Weld, Visco, Atherton

Recused None

Documentation Supporting documents and plans, staff recommendations.

Discussion (4:14) **Santamaria** – The variance request was changed asking for a 5-bedroom I/A system.

Brian Swain, Counsel for the owners – Confirmed the updated request. This is a temporary condition until sewer comes to the area.

Action **Motion to Approve on the condition an I/A system is installed.** (made by: Visco) (seconded by: Cooper)

Vote Carried unanimously

4. Variance from Local Regulation 64.04 B for 137 Hummock Pond Road M/P 65-72

Sitting MacNab, Cooper, Weld, Visco, Atherton

Recused None

Documentation Supporting documents and plans, staff recommendations.

Discussion (4:15) **Santamaria** – A permit was issued several years ago for a 12-bedroom I/A septic on a 2-acre lot using bedroom credits. Under the new regulations for Hummock Pond, it would be limited to 7 bedrooms; the original permit should have been issued limiting the property to 8 bedrooms.

Atherton – Asked for clarification about what credits allow.

Visco – The credit is usually 2 bedrooms per acre.

Arthur D. Gasbarro, Nantucket Engineering & Survey – An I/A system would have less nitrogen loading than a smaller conventional system. This area requires only a conventional system; they are asking for an I/A.

Visco – Asked if the regulations for Hummock Pond are different.

Crowley – No, the regulations allow 1 bedroom every 10,000 square feet; this is a nitro sensitive area.

Atherton – We need to be comfortable with the distinction.

Visco – He has no problem with the request.

Discussion about the nitrogen loading of a 12-bedroom I/A versus a conventional 8-bedroom system.

MacNab – Still uncomfortable with this though the argument is good.

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

Vote Carried 4-1//MacNab opposed

5. Variance from 51.02 (A) relief of well set back for 51 Tennessee Avenue N/P 59.4-202

Sitting MacNab, Cooper, Weld, Visco, Atherton

Recused None

Documentation Supporting documents and plans, staff recommendations.

Discussion (4:25) **Crowley** – The applicant was in for a local upgrade of their septic but the well is within 150 feet of the septic and needs variance.

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

Vote Carried unanimously

6. ACO 74 Arkansas Avenue – Request for Conditional Approval Pending Property Transfer M/P 59.4-41

Sitting MacNab, Cooper, Weld, Visco, Atherton

Recused None

Documentation Supporting documents and plans, staff recommendations.

Discussion (4:28) **Santamaria** – The applicant had a betterment loan to repair a failed system; the property is being sold. They are asking for conditional approval of an ACO as long as the loan is paid off

Paul Seibert, Grady Consulting, LLC – The ACO is to replace a failed system and abandonment of that system.

Action **Motion to Grant a conditional ACO on condition the Betterment Loan is paid off.** (made by: Cooper) (seconded by: Visco)

Vote Carried unanimously

7. ACO 29 South Cambridge Street M/P 59.3-3 – technical failure

Sitting MacNab, Cooper, Weld, Visco, Atherton

Recused None

Documentation Supporting documents and plans, staff recommendations.

Discussion (4:30) **Santamaria** – Asking for an ACO to get the system working.

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

Vote Carried unanimously

8. Betterment Loan request 14 Hawthorne Lane M/P 56-225 – hydraulic failure

Sitting MacNab, Cooper, Weld, Visco, Atherton

Recused None

Documentation Supporting documents and plans, staff recommendations.

Discussion (4:32) **Santamaria** – Betterment to repair the system.

Action **Motion to Approve.** (made by: Weld) (seconded by: cooper)

Vote Carried unanimously

9. Betterment Loan request 3 Salros Road M/P 66-20.1 – hydraulic failure

Sitting MacNab, Cooper, Weld, Atherton

Recused Visco

Documentation Supporting documents and plans, staff recommendations.

Discussion (4:33) **Santamaria** – This system is very failed; the Betterment Loan is to connect to sewer.

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

Vote Carried unanimously

11. Holding tank for construction trailer 9 Kimball Avenue M/P 30-31

Sitting MacNab, Cooper, Weld, Visco, Atherton

Recused None

Documentation Supporting documents and plans, staff recommendations.

Discussion (4:35) **Santamaria** – Asking for a 1,000-gallon black-water tank with regular pump out during a 2-year construction project. The tank serves a bathroom in the trailer for office workers. Holding tanks don't have the alarms and specifications the State requires for tight tanks. He has a letter from Nantucket Septic stating they would provide regular pump out of the tank.
Crowley – Title 5 provides a standard for tight tanks; he doesn't see going any less than that.
MacNab – He isn't hearing a convincing argument for the holding tank over a tight tank.
Visco – Suggested having them install the house septic system which was filed and approved and the trailer can tie into that.

Action Continued to August by unanimous consent

Vote N/A

12. Behavioral Health Task Force Discussion with Janina Keane

Sitting MacNab, Cooper, Weld, Visco, Atherton

Recused None

Documentation Supporting documents and plans, staff recommendations.

Discussion (4:42) **Santamaria** – Introduced Ms Janina Keane of the Behavioral Health Task Force.
Keane – Reviewed her qualifications. Explained the need to measure the prevalence of illness on Nantucket and then map it against existing services to find areas that are lacking. Systems that worked several years ago no longer meet the level of need existing today; the waiting list for services in April was 1 month; now it is 2 months. Noted that Yale University has talked about bringing telemedicine to the island and educating physicians on intervention and interfacing with patience with mental health and substance abuse issues.
MacNab – The major health problems on the Island are tick borne diseases, pollution of water, substance abuse, and safe housing. Asked if there is enough population to sustain a full-time, dedicated center.
Keane – That is the reason for the prevalence study. From there you know what is required to meet the needs. Stated that the hospital is dedicating four swing beds for use by patients with psychiatric issues.
Weld – Asked if the task force works autonomously.
Keane – Yes.

13. Variance from Regulation 68 for 9 Dukes Road M/P 41-309

Sitting MacNab, Cooper, Weld, Visco, Atherton

Recused None

Documentation Supporting documents and plans, staff recommendations.

Discussion (4:53) **Santamaria** – This location has a hydraulic failure; they are asking for a deferment from connecting to sewer.
Christy Brizita – Explained status of permit. Asking for an extension of 6 months to finish the permitting process.
Crowley – They could be fined for non-compliance; they are asking for a variance in lieu of that. Noted the system has been in failure for 10 years with multiple letters sent and no response.
Brizita – Explained the delay and that the property is now in a trust with her as the trustee. Said a surveyor advised her to hold off connecting to sewer.
MacNab – Once the permit is filed, the property is in compliance with regulations. Asked when that would happen.
Santamaria – The only difference between this lot and others on Dukes Road is that it is in hydraulic failure.
Brizita – She believes the permit will be accepted within the month.

MacNab – If the permit is not in by September, the Board will have to enact enforcement.
Santamaria – In the meantime, the system will be pumped, the frequency is up to the board.
Suggested granting the variance with pumping to be as needed.

Action **Motion to Grant the variance with the permit to be in place by September 1, 2016 and the system to be pumped as needed and permanent repair within six months.** (made by: Weld) (seconded by: Visco)

Vote Carried unanimously

14. Appeal of Well Placement on 21 Quidnet Road M/P 21-30

Sitting MacNab, Cooper, Weld, Visco, Atherton

Recused None

Documentation Supporting documents and plans, staff recommendations.

Discussion (5:04) **Santamaria** – The well requires a 300-foot wellhead protection buffer; that has been appealed.
Steven Cohen, Cohen & Cohen Law PC, 19 Quidnet Road – The 300-foot buffer between the well and his client’s septic takes up the area where his client intends to place their house; it is easier to relocate the well; noted alternate locations. He is hoping the board will require one of those alternate locations be used; that or waive the 300-foot local buffer and stick with the 100-foot state buffer. Noted that the well was drilled before the end of the 30-day appeal period.
Marianne Hanley, Reade, Gullicksen, Hanley, & Gifford LLP for 21 Quidnet Road – The well meets all requirements of the regulations; there is substantial room for the abutter to relocate house and well.

Jeff Blackwell, Blackwell & Assoc. for 21 Quidnet Road – Reviewed plans showing alternate locations for the neighbor’s septic system. At the time of the filing for the appeal, the abutter had filed nothing for build-out of their property.

Cooper – Asked about the “existing well” Noted on the plans.

Blackwell – That’s a second well on the property.

Discussion about where the well is proposed and where the neighbor’s septic is proposed and whether or not there are reasonable alternatives.

Hanley – Mr. Cohen’s comments about excavation, brush cutting etc. applies to her client as well. Feels the neighbor’s lot is large enough for the program to be relocated outside the well-head protection zone. As far as reducing the wellhead protection zone, she’d need to talk to her client about that. There was nothing in the public records in regards to plans for 19 Quidnet Road. Asked for a denial of the appeal; the position of this well does not deny the abutter of using their property.

Atherton – Asked the reason for not putting the well near the road.

Blackwell – There are houses across the street with wells and septic systems precluding placing the well near the road.

Visco – Doesn’t like the idea of the owners of 19 Quidnet Road not having any proposal but trying to tell the owners of 21 Quidnet Road where to put the well on their lot. He’s inclined to leave it where it is.

Crowley – There is plenty of room at 21 Quidnet Road to put the septic. The leach facility is the issue and it can be located anywhere. Noted that during the 30-day appeal period, the applicant drills at their own risk.

MacNab – Agrees the 300-foot buffer shouldn’t be changed. The well was drilled within the 30-day appeal period. There is an inconvenience for 19 Quidnet Road. They have to deal with the health issue.

Cooper – Agrees with Mr. Visco; he’d like to see a set of plans laid out for 19 Quidnet Road; as it stands now with nothing there, there is no plan and so no problem.
Discussion on the motion.

Action **Motion to Deny the appeal.** (made by: Atherton) (seconded by: Visco)

Vote Carried 4-1//MacNab opposed

15. Hearing: mobile unit license for 167 Hummock Pond Road M/P 65-36

Sitting MacNab, Cooper, Weld, Atherton(departed 5:35 p.m.)

Recused Visco

Documentation Supporting documents and plans, staff recommendations.

Discussion (5:30) **Santamaria** – Have attempted to do inspections at the location; had multiple non-compliance issues. Asking to revoke the permit for this operation.

Hearing open: 5:31 p.m.

James Merberg, Counsel for Jesse Sandole – Noted this is Mr. Sandole’s first year operating the facility and is “finding his way” as owner/operator. The food truck has two 21-gallon grey water tanks that is to be inspected and emptied. The staff has been instructed to make the site available to inspection. Submitted inspection reports at the table. On the issue of compliance, his client understands his obligations to public health and is working to do that. They are engaging the services of Hughes Septic to pump the trailer on an as-needed basis or place an above-ground tight tank on the sight.

Santamaria – It has been the experience of the staff that there has been no effort at compliance. Most recent interactions with Mr. Sandole have not been polite. It is stated in the state regulations that at any time to misrepresent work being done, which in this case is creating food at that site other than the license permits and/or interfere with the inspection are individually reasons for suspension of a license to operate.

Ross – This has been going on for two months. The facility at Nautilus is supposed to be used for dropping of grey water, food production, and restocking of trailer; by not taking the trailer, it is not being taken care of. There is a van, which came downtown; noted he did not have time to inspect the van. However, 90% of the time, the trailer has not moved from the Hummock Pond Road site; if it’s being cleaned it is happening out there and where the grey water is going is questionable; he questions where the grey water is going and how is the trailer being properly cleaned if it isn’t going back to the Nautilus site in Town. Noted there is no license to do any food beyond fish in the trailer; the property has a 3-bedroom septic system, which isn’t adequate for anything more than taking care of the fish market. Noted that Ms LaFavre had told Mr. Sandole that they wanted 24-hour notice and that an email was fine. They’ve been going at the same time of day.

Santamaria – The food code states the trailer has to be at the base of operation every day for cleaning, preparation, and emptying of grey water. The septic system at Hummock Pond site is not adequate for a full-service kitchen. Another reason for this hearing is the misrepresentation by Mr. Sandole of the work that’s been done and interfering with the performance of inspection.

Merberg – Stated that the grey water is being taken to the facility and that his client has discontinued preparing pies in the trailer; they do prepare fish. Assured his client is now in full compliance with that issue. Noted that the Lobster Trap has a variance from bringing their trailer back to the facility daily. With regard to interactions with Mr. Ross, he apologies on behalf of Mr. Sandole and the staff. Asked no formal action be taken today to allow time for his client to correct the issues.

MacNab – The Lobster Trap variance will be reviewed in September and this is not the time to talk about doing that again. He might accept a new person trying to find his way in the business. However, there’s no excuse for rudeness and interfering with inspection.

Sandole – Apologizes for incident in question and noted his frustration with trying to be inspected every day while being busy.

Hearing closed 5:49 p.m.

Cooper – Asked about the pump-out proposal. He thinks Mr. Sandole would be looking at the Health Department for guidance, not venting frustration on them.

MacNab – We agreed to talk about that in September after reviewing the one variance granted.

Weld – Suggested issuing a warning with strict compliance guidelines.

Visco – The trailer has to leave for cleaning every day; have to follow the rules.

Santamaria – Asking for guidance and asking for a variance is two different things. His office manager sent Mr. Sandole a variance request form but never received that back.

MacNab – Leaning to suspending the license for the food truck. There is no excuse for the health inspectors to be treated badly.

Cooper – Suggested that one-more violation and the Health Department can shut them down immediately.

LaFavre – Daily inspection times have been a point of contention.

MacNab – That shouldn't be a matter of contention.

Sandole – Explained that normally the trailer will be back to the base between 5 a.m. and 8 a.m. but sometimes they run late.

Santamaria – The time the department was told the truck would be there, it wasn't.

MacNab – Any violation and the department has the authority to close down operation immediately.

Action **Motion to Recommend issuance of an official warning that if at any time there is any violation of regulation or coordination of inspection, the department has the authority to close the food truck.** (made by: Weld) (seconded by: Visco)

Vote Carried 3-1//MacNab opposed

16. Mouse Project Review

Sitting MacNab, Cooper, Weld, Visco, Atherton

Recused None

Documentation Supporting documents and plans, staff recommendations.

Public None

Discussion **MacNab** – Reviewed Dr. Kevin Esvelt's proposal to reduce the prevalence of tick-borne disease. The question is how the BOH would manage the program: reviewed two draft proposals. Asked for the board's support to continue the work on management draft; if there is a major change to the draft or program, he will come back to the board.

VI. DIRECTOR'S REPORT

1. Introduced the Health Department two interns, Abigail Silber and Emma Ospelt, and reviewed status of projects they are working on.
2. Infectious disease report: he has diseases broken down but doesn't have tick number. Will forward completed charts to the board. All cases so far are imported.
3. Discussion about Mosquito Control letter.
4. Fertilizer use education and licensing update.
5. Hummock Pond Assn will reapply.

VII. ADJOURN

Motion to Adjourn: 6:21 p.m.

Submitted by:
Terry L. Norton