

**VIRTUAL
SHERBORN
BOARD OF HEALTH MEETING
MINUTES
March 15, 2023**

Members Present: Matt Vitale, MD, Chair, Daryl Beardsley, Lisa Campe, and Matt Bevers, MD, PhD
Members Absent: Rebecca Hunnewell, MD

Others Present: Brian Moore, Christopher Herot, Tom Trainor, Kathryn Shannon, Julie Dreyfus, Jeff Waldron, Courtney Ek, “1508...569”, Arthur Fenno, Irene Saranteas Bassalee, Suzanne Hirschman, Susan McPherson, Neil McPherson, Carol Carter, Vivek Kadiyala, Sarah Tipton, and Mark Oram, Agent.

By a roll call vote:

Vice Chair Ms. Beardsley - Present

Member Dr. Bevers – Present

Member Ms. Campe – Present

Member Dr. Hunnewell – Absent

Chair Dr. Vitale - Present

This VIRTUAL meeting came to order at 7:00 PM via Zoom. It was noted that all votes shall be taken via roll call vote.

1. The Chair noted the members present and reviewed the agenda, noting the following items not anticipated by the Chair 48-hours in advance of the meeting, requesting that they be added to the agenda:

(1) Nomination of Animal Inspector

(2) MassDEP Notice of Responsibility to Eversource Energy – Pole 75/2 on Morse Road

(3) Proposed new PFAS standards from EPA

A motion was made to amend the agenda as stated, and it was seconded. By a roll call vote:

Vice Chair Ms. Beardsley - AYE

Member Dr. Bevers – AYE

Member Ms. Campe – AYE

Chair Dr. Vitale – AYE

The motion passed, and the agenda was amended.

APPROVED 4-0

2. **Proposed EPA PFAS Standard** – Ms. Campe reported that yesterday, the EPA released proposed Maximum Contaminant Levels (MCLs) for six known PFAS. She stated that the enforceable MCL for PFOA and PFOS would be 4 parts per trillion. The other 4 PFAS known to occur in drinking water are PFNA, PFHxS, PFBS, and GenX chemicals, and the EPA is proposing that a combined mixture cannot result in a hazard index above 1.0 (unitless). Ms. Campe stated that the state limit is currently 20 parts per trillion, and she anticipates that Massachusetts is already likely working on revising their regulations. She noted that these regulations are currently just proposed and are out for public comment – they have not yet been promulgated.

3. **3/1/2023 Minutes** – Minor edits were provided. A motion was made to approve the Minutes as amended, and it was seconded. By a roll call vote:

Vice Chair Ms. Beardsley – AYE

Member Dr. Bevers – AYE

Member Ms. Campe – Abstained

Chair Dr. Vitale – AYE

The motion passed and the Minutes were approved, with Ms. Campe abstaining as she was absent from this meeting.

APPROVED 3-0 / 1 ABSTENTION

4. **Nomination of Animal Inspector** – It was noted that nomination papers for the Animal Inspector were received from the Commonwealth of Massachusetts, Department of Agricultural Resources. A motion was made to again nominate *Kimberly Morrow* as Animal Inspector, and the motion was seconded. By a roll call vote:

Vice Chair Ms. Beardsley – AYE

Member Dr. Bevers – AYE

Member Ms. Campe – AYE

Chair Dr. Vitale – AYE

The motion passed.

APPROVED 4-0

The Administrator will provide the necessary paperwork to Ms. Morrow, who will then sign it, have it notarized, and submit it back to the State. The State will officially appoint the Animal Inspector.

5. **Eversource Energy – Pole Number 75/2 on Morse Road** – The Board noted receipt of a copy of a “Notice of Responsibility” letter from MassDEP to Eversource Energy regarding a release of oil/hazardous material at this location on 2/3/23. The letter informs Eversource Energy of their legal responsibilities under state law for assessing and/or remediating the release.

6. Dr. Vitale reviewed that later tonight the Board would be reviewing their proposed changes to Regulations II and III, noting that Town Counsel has reviewed the proposed changes and provided good guidance.

7. **Groundwater Protection Committee’s Presentation “Septic 101 for Sherborn Homeowners”** – It was noted that this presentation, scheduled for 3/14/23 from 7:00-9:00pm, was postponed, since the presenters from RCAP Solutions live in Western Massachusetts and were without power due to the storm. Tom Trainor stated that a new date has not yet been scheduled.

8. **“Citizen’s Concerns – 53-55-65 Farm Road” – 2/8/23 letter from Brian Moore (and others)** – Mr. Moore, Arthur Fenno, Susan & Neil McPherson, and Suzanne Hirschman (all signatories on the letter) were present. Dr. Vitale noted receipt of the letter, stating that the key concern was the closure of a drainage pipe. He stated that the outstanding question is if the stormwater or surface waters on Farm Road adequately dealt with in the context of the culvert being blocked, and he noted that was out of the Board of Health’s purview. There was not request made by the Board of Health on how to manage those drains. He recommended that the residents follow up with the DPW and Select Board with their concerns about this pipe, as it does not fall under the jurisdiction of the Board of Health. Ms. Beardsley noted that the Board received some photographs of the pond, and a path between the Pond and Lake Street showing expanded areas under water, but she also noted that they are not currently under the Board’s jurisdiction.

Dr. Vitale stated that a septic and well permit has been issued by the Board, and there is no further action the Board could take. The question about wetlands is not a Board of Health issue. He encouraged the residents to raise that issue with the ZBA when the Comprehensive Permit application is submitted. Ms. Campe stated that there was a river of water going down her street yesterday during the storm, noting that many roads and properties have some flooding with major storms.

9. **Regulations Review** (see Minutes of 3/1/23, 2/15/23, 2/1/23-#11 and #14, 1/4/23-#6 and #8, 12/7/22, 11/16/22, 11/2/22, 10/5/22, 9/21/22, 9/7/22, 7/20/22, 6/1/22, 5/18/22, and 4/6/22) –

Regulation II – (Domestic) Water Supply and

Regulation III – Public and Environmental Health Review Regulations and Standards (For Selected Site Development Activities or Other Special Conditions, or) For Other Than a Single-Family Dwelling on a Single Lot – Dr. Vitale stated that tonight the Board would be reviewing a document prepared by the Administrator that showed each, specific regulations change being proposed in order to ensure each proposed change passed the Board’s “gut check”. The Chair stated that the Administrator had provided a document that summarized each of the proposed regulatory changes, and he thought the Board could go through those tonight. He noted that Ms. Campe had provided some suggested language that could be incorporated into one of those sections. As far as public comment tonight, Dr. Vitale felt that it would be most helpful if a resident had technical expertise regarding a specific proposed change such that the change doesn’t make sense, or if there were questions or clarifications needed. However, those comments would be heard at the end of the Board’s discussion.

The Chair reviewed and explained each proposed change, and the Board and/or Agent provided clarifying background as necessary.

- (1) Reg. I, Section 3.4.0, Plans – Amending the title of this section to “Sewage System Design Plans”, and adding “as provided by the soil evaluator” to sub-section 3.4.1.
- (2) Reg. I, Section 4.0, Application Procedures – Renaming sub-section 4.0(A) to “Soil Testing Plan Requirements”, renaming sub-section 4.0(B) to 4.0(C), and adding a new sub-section 4.0(B) – Dr. Vitale noted that this proposed change articulates the established process and workflows that have been in place.
- (3) Reg. II – Title – Changing the title of this regulation from “Domestic Water Supply” to “Water Supply”.
- (4) Reg. II, Section 1.0, Permits – Deleting the requirement of human occupancy in subsection 1.1, and clarifying that a suitable water supply is required prior to issuance of a building permit. Following additional Board discussion, additional language “or connection to a semi-public or public water supply” was added.
- (5) Reg. II, Section 1.3, Permit Application – Deleting the existing language and replacing it with new language articulating the established process and workflows that have been in place (similar to #2 above except for the well application process).
- (6) Reg. II, Section 2.0, Definitions – Amending most sub-sections to clarify and update the specific definitions. Each definition was reviewed, noting typically minor edits. Most discussion centered around sub-section 2.4 “Semi-Public Water Supply”, and language was added allowing one home with one accessory dwelling unit as not being considered a semi-public water supply.
- (7) Reg. II, Section 3.0, Sanitary Performance – Removing “his” and adding “well development” to the first sentence, and adding “or development” to the second sentence. Proposed new language was deleted when the Board agreed it was already proposed to be added to a later section.
- (8) Reg. II, Section 4.0, Well Drillers – Update of regulation regarding certification of well drillers.
- (9) Reg. II, Section 6.0, Well Location – Administrative changes to sub-sections 6.0(E) and 6.0(F), changing existing sub-section 6.0(G) to 6.0(H), and adding a new sub-section 6.0(G). It was noted that the new sub-section 6.0(G), added language about determining the protective radius for a semi-public water supply. Following discussion, an additional change was made to 6.0(G)(1).
- (10) Reg. II, Section 7.0, Number of Wells – adding the words “owner, association” to the second sentence.
- (11) Reg. II, Section 8.0, Pump Houses – Updating the name of the installation manual for pump houses.

- (12) Reg. II, Section 11.0, Well Specification – Deleting the second sentence from sub-section 11.1, and adding new sub-sections 11.3 (Well Installation and Development) and 11.4 (Static Water Level).
- (13) Reg. II, Section 12.0, Tests – Renaming this section “Well Performance Tests”, and adding a new sub-section H regarding well flushing.
- (14) Reg. II, Section 15.0, Well Abandonment – Renaming the title of this section to include Decommissioning or Repair, adding “and properly decommissioned by a certified well driller” to sub-section A, renaming sub-section B to include “Decommissioning Procedures”, and adding a new sub-section C “Well Repair Procedures”.
- (15) Reg. II, Section 16.0, Pipes and Equipment – Updating outdated language in sub-section A regarding the specifications of all service pipes and connections.
- (16) Reg. II, Section 17.0, Water Quality and Quantity Specifications – Deleting “and Quantity” from the title of this section.
- (17) Reg. II, Section 17.1, Sanitary Protection – Amending the second sentence and adding language about disinfection and decontamination of a well.
- (18) Reg. II, Section 17.2, Sampling/Quality – Requiring that water samples shall be “collected by a qualified professional, and ...”, and requiring that conformance to “... and Board of Health” drinking water standards. Ms. Campe stated that this proposed change makes sense, especially since the Board is adding quality testing for PFAS to the requirements. The Board also noted that this is a requirement for a permit for a potable well, and not for generic testing conducted periodically by a homeowner.
- (19) Reg. II, Section 17.3, Laboratory Tests – Amending the language in sub-sections A, C, D, E, F, and G, and adding a new sub-section H regarding disinfection and decontamination. The Board reviewed Ms. Campe’s red-line version of proposed amendments. It was noted that methods and detection limits for both Volatile Organic Compounds and PFAS were added, and linking them to the Massachusetts standards, which have to be at least as stringent as the Federal standards. She stated that this way, the Board will not have to keep changing/updating their regulations every time the State or EPA changes it. The proposed language in sub-section G was discussed at length and amended for clarity.
- (20) Reg. II, Section 17.4, Water Conditioning – Amending the final sentence of this section to clarify that treatment units shall be installed with the capability of by-passing such units “during a repair event or other special action, or if the raw water no longer requires treatment”.
- (21) Reg. II, Section 18.0, Enforcement – Deleting the existing language in sub-section (B)(1) and replacing it with new language.
- (22) Reg. III, Public and Environmental Health Review Regulations and Standards for Other Than a Single-Family Dwelling on a Single Lot – Amending the title of this regulation to add “For Selected Site Development Activities or Other Special Conditions, or ...” after the word “Standards”.
- (23) Reg. III, Section 3.1, Environmental Health Impact Report – Adding “EHIR” to the title of this section, and clarifying and reformatting the activities requiring an EHIR in the first two paragraphs of this sub-section.
- (24) Reg. III, Section 3.2, Environmental Health Permit – Administrative change removing capitalization of the permit name.
- (25) Reg. III, Section 5.0, Definitions – Adding sub-section numbers to the existing definitions, and adding a new definition “5.3, Project”. The Agent stated that the addition of 5.3 is actually a new section of the regulations rather than a change or modification, and he noted that this will need to be advertised and sent to MassDEP once approved in order to make it official. He felt it important the Board be aware that it follows all of the procedures required to adopt a new regulation. Ms. Beardsley responded that the wording largely came from MEPA, which is the Massachusetts Environmental Policy Act, and she stated that the regulatory language included in MEPA is too

complicated for what we do here as it is for much larger projects. This was in a court case where they were defining what it meant to try to evade, defer, or curtail application of regulations at the MEPA level, so it was borrowed from them. The Agent felt that is enough to support this language in the regulations, and he noted he was bringing it up just for process.

- (26) Reg. III, Section 7.0, Water Supply – Removing the word “domestic” from the first sentence of the first paragraph, and adding a second paragraph regarding requirements for a semi-public water supply.
- (27) Reg. III, Section 8.0, Sewage Disposal – In the second sentence of sub-section 2, changing the word “lots” to “units”, and adjusting the minimum wastewater flow from “4400” gpd to “2000” gpd. Dr. Vitale noted that the design flow required per bedroom is 110-gpd, so he noted that clearing 18 or 19 bedrooms would be needed in order to trigger this (multiple household units), warranting a tailored approach. The Agent noted that there are additional requirements for septic systems that are 2000-gpd and above.
- (28) Reg. III, Section 9.0, Special Industrial and Commercial Requirements – Removing the words “projects for” from the first sentence of the first paragraph
- (29) Reg. III, Section 10.0 Bedrock Disruption – Adding the phrase “or as part of a project” to the first sentence in sub-section A. Unrelated to the proposed change, Dr. Vitale noted that one question that Dr. Hunnewell had raised at a previous meeting was whether there should be a “zero-cubic-yard” threshold for bedrock disruption. He stated that the feedback on the Board was that there is some balance of risk and benefit, and that a “zero” level threshold was likely to be an undue burden to individual property owners and difficult to enforce. The Board felt the 10-cubic-yard threshold remained reasonable. Dr. Vitale noted that the use of thresholds, whether for maintaining existing well setback thresholds or using a minimum bedrock disruption threshold, remains appropriate and should be tailored by the Board for the circumstances, and he felt this threshold has. Ms. Beardsley noted that the moving off from a zero threshold was influenced by the last Public Hearing when the addition of this section was being discussed. Dr. Vitale felt that while a more aggressive regulation might nominally reduce risk, he also felt that having a threshold makes the regulation much more enforceable and much more tailored to the level of risk involved.
- (30) Reg. III, Section 13.0, Earth Removal Standards – Introductory sub-section 13.1, Submittal Requirements – Removing “per lot or 1000-cubic yards” from the first paragraph.
- (31) Reg. III, Section 14.0, Scope and General Submittal Requirements – Correcting a grammatical error by changing “where ever” to “wherever” in sub-section 3.

At the conclusion of the discussion of each of the proposed changes, the Board returned to further discuss proposed change #9 above, regarding the protective radius for a semi-public water supply. Following that discussion, the Board was in agreement that the protective radius would be either 100-feet or the value calculated by the equation: Protective radius in feet = $(150 \times \log \text{ of pumping rate in gpd}) - 350$.

Brian Moore of 49 Farm Road stated that he felt the whole purpose of having a protection radius for a semi-public water supply is to make sure the water supply quality is available, and quantity is available, for multiple dwelling locations. He felt that setting our standards at the “basement” of the semi-public water supply standards is not an unreasonable or onerous approach to take in this case, nor is having a protective radius that has to be protected for those purposes, so he stated that he wasn’t sure he was in agreement with reducing that protective radius to 100-feet. Ms. Beardsley noted that other protective setbacks for wells, such as from SASs, are still to be applied to semi-public water supplies.

Mr. Moore stated that he thinks there is a conflict with the language in change #s 9 and 10. Dr. Vitale provided examples and Dr. Bevers explained that #10 (Section 7.0 of the Water Supply Regulations) says you can’t have more than one well serving yourself. It also says that you can’t have a well serving

more than one dwelling without being a semi-public water supply. He stated that proposed change #10 is trying to avoid people having multiple wells when they only have one house.

A motion was made to approve the language in the proposed regulations as provided in the draft public hearing notice, as amended, as ready for a public hearing, pending final review by Town Counsel, and it was seconded. By a roll call vote:

Vice Chair Ms. Beardsley – AYE

Member Dr. Bevers – AYE

Member Ms. Campe – AYE

Chair Dr. Vitale – AYE

The motion passed and the draft changes were approved, as amended. **APPROVED 4-0 as amended**

The Administrator will make the necessary changes to the document and forward it to Town Counsel for final review.

9. **3/29/2023 Agenda Items** to date were reviewed. The Administrator stated that there is one variance hearing scheduled (for 7:30 pm). Under Chair's business, the following items will be listed:

- Follow-up from Town Counsel on the proposed regulations changes, if any
- Results of the Advisory Committee Hearing on the FY24 budget

Other Health Agent business, including 2 septic/well renewals and 2 Preliminary Building Application reviews are listed. In response to a question from Dr. Vitale regarding the return to in-person meetings after 3/31/23, Select Board Chair Jeff Waldron reported that both the House and Senate had approved a 2-year extension to March 2025, and it is now awaiting the Governor's signature.

10. **Adjournment** – A motion was made to adjourn the meeting, and it was seconded.

By a roll call vote:

Vice Chair Ms. Beardsley - AYE

Member Dr. Bevers – AYE

Member Ms. Campe – AYE

Chair Dr. Vitale – AYE

This virtual meeting adjourned at 8:56 PM.

Respectfully Submitted,



Ellen J. Hartnett
Administrator

cc: Town Clerk; and File.

[cc: via email to: Planning Board; Conservation Commission; Board of Assessors; Select Board; Fire Chief; Building Inspector; and Mark Oram, Agent]

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DOCUMENTS REVIEWED AT THE VIRTUAL 3/15/2023 MEETING
(All items stored in the Board of Health files unless otherwise noted)

1. **Proposed Regulations** –
 - Regulation II – (Domestic) Water Supply
 - Regulation III – Public and Environmental Health Review Regulations and Standards (For Selected Site Development Activities or Other Special Conditions or) For Other Than a Single-Family Dwelling on a Single Lot
 - BOH Administrator’s Summary of the Proposed Changes, dated 3/15/2023
2. **53-55-65 Farm Road** –
 - “Citizen’s Concerns” letter dated 2/8/23, received from Brian Moore (49 Farm Road), with attachments
3. **Nomination of Animal Inspector** –
 - Nomination papers for Kimberly Morrow received 3/13/23 from the Commonwealth of Massachusetts, Department of Agricultural Resources
4. **MassDEP Notice of Responsibility** –
 - Letter from MassDEP dated 3/10/23 and received 3/13/23 addressed to Eversource Energy regarding Pole #79/2 on Morse Road
5. **Minutes** –
 - BOH meeting Minutes of 3/1/2023