

**VIRTUAL  
SHERBORN  
BOARD OF HEALTH MEETING and  
PUBLIC HEARING ON PROPOSED REGULATIONS CHANGES and  
APPEAL HEARING for Bedrock Disruption Permit at 39 Wildwood Drive  
MINUTES  
August 23, 2023**

**Members Present:** Daryl Beardsley, Chair, Matt Bevers, MD, PhD, Julie Dreyfus, and Rebecca Hunnewell, MD

**Members Absent:** Diana Hoek

**Others Present:** Tim Batchelder, “Laura’s iPad”, K. St. George/Heritage, Matt/Geosphere, “883801”, M.R. Powicki, Asha Strazzero-Wild, Sue Wetherill, Wendy Harris, Marianne Moore, William Harris, Mark Dershwitz, “Barb’s iPad Air 2”, Courtney Ek, Kysa Merget, Ray Talkington/Geosphere, Tom Trainor, Berri Jacque, Jeff Waldron, “Amee’s iPhone”, Jeff Bowman, Dristie Kenyon, Jeremy Masette, Laura & Paul Hartnett, Zen Ziskin/Heritage, Josh Ziskin/Heritage, Julia Doctor, Eddie Rosa, P.J. Connors, P. Brockway, “Prashant”, “Scott”, Zenya Wild, Andrew Jacobus, Andy Lindsay, Desheng Wang, Heidi Doyle, Nick Rodenhouse, Marigold Garrett, Cath Rocchio, George Morgan 1961, Jacqueline Herrold, Paige Brodie, Tara Lindsay, Nicole Kepnes, Damon Seligson, Esq., “David”, D. Hopkins, Erin Cuddy, Brian Faria, David Hunter, Mark Williams, Robert Truax, P.E., Sean Killeen, “1508\*\*\*\*569”, “Andi’s iPhone”, “hebl025#”, Jane Rosengard, Pat Kneeland, “1508\*\*\*\*688”, Ardys Flavelle, Aayush Narayanan, “Narayanan”, Eliz. Davidson, Robert Hall, Ronald Jantzen, Tim Downs, Rick Antell, Ravi Hanumantha, Peggy Homer, Matthew Brooks, “Doug F.”, Heather White, Esq., Arthur White, Esq., George R. Morgan, “iPhone Scott”, “iPhone”, Bob Murchison, “Coco Birmingham’s iPhone”, Natasha Clarke, Tom Curran/Food Inspector, and Mark Oram/Agent.

By a roll call vote:

Vice Chair Dr. Bevers – Present

Member Ms. Dreyfus – Present

Member Ms. Hoek – Absent

Member Dr. Hunnewell – Present

Chair Ms. Beardsley – 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) Off-the-Vine Catering – 2023 Temporary Food Establishment Permit #TF23-54 – 9/2/23
- (2) Tailgate Gourmet Catering – 2023 Temporary Food Establishment Permit #TF23-55 – 8/26/23
- (3) Tailgate Gourmet Catering – 2023 Temporary Food Establishment Permit #TF23-56 – 10/14/23
- (4) Updated COVID-19 informational document posted on BOH website
- (5) ZBA Petitions for Hearings on 9/6/23

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

Vice Chair Dr. Bevers – AYE

Member Ms. Dreyfus – AYE

Member Dr. Hunnewell – AYE

Chair Ms. Beardsley– AYE

The motion passed, and the agenda was amended.

**APPROVED 4-0**

2. **Heritage of Sherborn – Discussion of Inspection Report** (see Minutes of 12/21/22, 10/19/22, 6/1/22, 10/20/21, 9/29/21, 7/21/21, 6/16/21, and 6/2/21) – Josh & Jen Ziskin, owners of the Heritage, were present with “front-of-house” manager Kristen St. George. Food Inspector Tom Curran reviewed his routine sanitary inspection of July 28, 2023 detailing several violations, including but not limited to an expired hood cleaning sticker, an ice machine with visible soils, a walk-in cooler with what appeared to be mold (including a mold-appearing substance on butter), and soiled insulation above the kitchen with a mold-appearing substance. Mr. Curran stated that a follow-up inspection was conducted on August 12, 2023, and he stated that there were still outstanding issues. Following a conversation with the Chair, an Order letter was sent to the applicant on August 15, 2023, requiring correction of all outstanding items by today. In response to a question from Dr. Bevers asking if the required proof of correction has been received, Mr. Curran stated that he received a photo today showing the doors have been sealed, as well as an estimate from an environmental engineer, which is pending a signature of the owner of the Heritage.

Josh Ziskin stated that everything has been completed, or is in process. He stated that the environmental engineer is scheduled to come this Friday, August 25<sup>th</sup>. Mr. Ziskin stated that they missed solving the problem of moisture in the walk-in cooler, but he felt it has been corrected now that the drain pipe has been unclogged. Mr. Ziskin stated that he believes the insulation above the kitchen is just “dirty”, and he stated that the hoods were cleaned but he was not given a sticker as proof. It was noted that the remediation of the insulation and the engineer’s report are still outstanding. Ms. Beardsley commented that the problem with the insulation has been a violation for a long time, noting it first happened when a pipe burst in February 2023. Mr. Ziskin responded that he just received the final insurance check in July, and he is now working with Mass Save. In response to a question from the Board, Mr. Ziskin stated that he can do the removal of the insulation prior to replacing it.

Dr. Bevers noted the recurrent violations, and commented that it resulted in an Order letter. He asked if the Board should continue to drag this out or if they should suspend Heritage’s permit to operate until *all* corrections have been made. Ms. Beardsley stated that perhaps closing the business would allow the owners time to get all of the violations corrected. Ms. Dreyfus asked if there are any specific violations that would require closure in order for the work to be done, and the food inspection responded that the areas over the kitchen would require closure in order to avoid contaminants to enter the food preparation areas. Mr. Ziskin responded that he has addressed everything on the inspection report other than the insulation, and suggested that closure would bankrupt them. Jen Ziskin commented that they have worked hard to make the needed corrections. Dr. Bevers responded that the Board does not take this lightly, and that the Board has a responsibility to ensure food safety at the restaurant.

Noting a comment made by Mr. Ziskin, Food Inspector Curran noted that while he cannot speak for Mr. Canney, the Board does work swiftly and cooperatively with him. Mr. Curran stated that the Order was contingent upon that insulation being removed and replaced as soon as possible. He stated that this happened in February, and the Board expected the correction to be done by now, and the Board must take public health into account.

Ms. Dreyfus noted that the insulation is the only piece that hasn’t been addressed, and that the engineer’s evaluation regarding the moisture in the basement should be done on Friday, with the report expected one week later. Mr. Ziskin stated that engineer’s report and insulation removal should be done within 3-weeks. Ms. Beardsley stated that he should focus on removal of the insulation and cleaning that area without waiting for the timing with insulation replacement.

Dr. Bevers noted the Board’s options are: (1) suspend Heritage’s permit and close the restaurant, or (2) set a defined deadline by which all corrections are to be made (but he noted that was already done and

the deadline is *today*). Dr. Hunnewell stated that she would be in favor of setting a defined deadline and then taking action.

Mrs. Ziskin commented that this is a very quick turnaround to require corrections, but Dr. Bevers noted that the same violations have been noted in previous inspection reports. Discussion followed regarding the persistent moisture in the basement.

A motion was made, noting that the moisture in the basement could be groundwater, condensation, or both, the Board requires an assessment by an Environmental Engineer to assess the viability and safety of storing and keeping food in the basement. This assessment, denoting the scope of the necessary remediation, is due to the Board no later than close of business on September 1, 2023. This report will be discussed at the September 6, 2023 Board of Health meeting. If this engineering report indicates the basement is *not* appropriate for food storage, there should be a plan provided for how and where that food shall be stored. Additionally, the Board shall address the needed removal of insulation from above the kitchen area and cleaning of that area prior to replacing with new insulation. An invoice reflecting the removal of the insulation and cleaning of the area, indicating that the work has been completed, shall be due to the Board of Health by September 15, 2023. That will be discussed at the September 20, 2023 meeting. It was noted that the Board reserves the right to address other issues at the Heritage as they arise. This motion was seconded. By a roll call vote:

Vice Chair Dr. Bevers – AYE

Member Ms. Dreyfus – AYE

Member Dr. Hunnewell – AYE

Chair Ms. Beardsley – AYE

The motion passed and the Board was in agreement with the schedule for remediation as discussed.

**AGREED 4-0**

### 3. **20 Morse Road, Reinaldo Faria – VARIANCE HEARING – Septic Replacement #23-28 –**

The Administrator stated that the certified list of abutters, a copy of the abutter notification letter, and the certified mail return receipts (green cards) had been provided and all was in order. The Hearing was opened.

Robert Truax, P.E., of GLM Engineering was present, as was Brian Faria. Abutters Marianne Moore and Nick Rodenhouse were also present. The proposed design plan was shown. Mr. Truax stated that the existing system is in failure. He stated that the area perked well (percolation rate 2-mpi), but there is a high water table. A conventional system is proposed, and it will be a mounded system. Only one local variance is requested:

(1) Section 8.0(2) – to allow the proposed soil absorption system to be installed in an area where groundwater is <5-feet below natural surface grade.

Abutter Marianne Moore commented that the soils are very porous, and this site is <200-feet from Dowse's Pond. She stated that she does not support this variance.

Abutter Nick Rodenhouse also voiced opposition to this variance, stating it would set a precedent in the area. Dr. Bevers noted that the current situation – a failed system – presents a greater threat than this replacement system. Ms. Beardsley stated that while the Board prefers naturally deposited soils, for homes built prior to the local regulations, it would be manifestly unjust to *not* allow this variance. The Agent noted that no increase in design flow is being requested – it is an existing 4-bedroom house and the replacement system is being designed for a 4-bedroom house.

A motion was made to approve this variance as requested, and it was seconded. By a roll call vote:

Vice Chair Dr. Bevers – AYE

Member Ms. Dreyfus – AYE

Member Dr. Hunnewell – AYE

Chair Ms. Beardsley – AYE

The motion passed and the requested variance was approved. **APPROVED 4-0**

The Hearing was closed

The Agent recommended approval of this plan as presented, conditional to the garbage grinder prohibition deed recording, and such a motion was made and seconded. By a roll call vote:

Vice Chair Dr. Bevers – AYE

Member Ms. Dreyfus – AYE

Member Dr. Hunnewell – AYE

Chair Ms. Beardsley – AYE

The motion passed and the plan was approved with condition. **APPROVED 4-0 with condition**

4. **81 Brush Hill Road, Rory McGrath – VARIANCE HEARING – Septic Replacement #23-29** (see Minutes of 7/19/23) – Dr. Bevers expressed his understanding that this application has been withdrawn, or at least that the owner(s) do not wish to go ahead with it tonight. The Administrator responded that this application has *not* been withdrawn, but the owner has indicated that she did *not* notify the abutters, stating the family was away on vacation until the start of school. She requested to move forward on the September 6<sup>th</sup> agenda, but the Administrator has advised that a new Variance Hearing date will need to be scheduled and abutter notification by the owner(s) will need to occur. Subsequently, the Registered Sanitarian, Eric Dickinson of CIVILized Solutions has noted that the owner(s) wish to change the design to a 4-bedroom house. So, we are at a standstill.

The Agent stated that he will be working with the Registered Sanitarian on this because if they wish to add a bedroom, they cannot do that if they need any State waivers or Local Upgrades. They may need to replace/relocate the well in order to avoid State waivers or Local Upgrades. In addition, the Agent stated that there are other items the Board may wish to discuss with the owners when they are present, and he suggested they be added to a future agenda. One is that this facility is up for rent (online websites) and this is a failed cesspool. He requested the Board allow him to work with the Chair to draft an Order that says the house cannot be occupied, and the cesspool must be kept out-of-service, until it is replaced with a compliant septic system. The Order will note that they have a right to a Hearing, if they so wish. The other issue is the fact there was an investigation on this property as a result of a complaint made to MassDEP that the owner(s) were pumping effluent from the cesspool onto the ground. An abutter complained because the effluent was going towards his property. The Agent stated that discussion of these two items should be on the September 6, 2023 meeting, and that discussion does not require abutter notification (there will be no review of requested variances or the design plan).

The April 25, 2022 Title 5 Inspection Report was reviewed, showing that the cesspool is sitting in the groundwater. The Board of Health regulation was reviewed, and it shows that the cesspool should have been replaced “immediately”. Ms. Beardsley noted the urgency of sending the Order is because the online advertisement for this as a rental unit indicates a 9/1/23 availability date.

A motion was made to authorize the Agent to work with either the Chair or Vice-Chair on drafting an Order letter to be sent ordering them to proceed with the replacement of the cesspool immediately, and the house should remain unoccupied so the cesspool is not used, until the replacement system is completed (a certificate of compliance is issued). The motion was seconded. By a roll call vote:

Vice Chair Dr. Bevers – AYE

Member Ms. Dreyfus – AYE

Member Dr. Hunnewell – AYE

Chair Ms. Beardsley – AYE

The motion passed and the Board was in agreement. **AGREED 4-0**

5. **PUBLIC HEARING Continuation – Board of Health Regulations Changes** (see Minutes of 7/19/23, 6/21/23, 6/7/23, 5/17/23, 5/3/23, 3/29/23, 3/15/23, 3/1/23, 2/15/23-#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) – A motion was made to open the Continuation of the Public Hearing, and it was seconded. By a roll call vote:

Vice Chair Dr. Bevers – AYE

Member Ms. Dreyfus – AYE

Member Dr. Hunnewell – AYE

Chair Ms. Beardsley – AYE

The Public Hearing was opened.

Noting that only 20-minutes has been allowed tonight for discussion of the proposed regulations changes, Dr. Bevers asked if the Board had any appetite for scheduling a special meeting dedicated only to the regulations. All members present were in agreement that was a good idea, but there were conflicts for someone on each of the dates proposed. Finally, it was decided to start the October 4, 2023 meeting at 6:00 PM (versus the typical 7:00 PM) and do regulation review for that first hour.

A motion was made to continue the Public Hearing until 6:00 PM on October 4, 2023, and it was seconded. By a roll call vote:

Vice Chair Dr. Bevers – AYE

Member Ms. Dreyfus – AYE

Member Dr. Hunnewell – AYE

Chair Ms. Beardsley – AYE

The motion passed and the PUBLIC HEARING was continued.

**AGREED 4-0 /**

**Continued to 10/4/23 at 6:00 PM**

6. **Off-the-Vine Catering – 2023 Temporary Food Establishment Permit #TF23-54** – This vendor will be catering an event at Silverwood Farm on September 2, 2023. The Administrator stated that the Food Inspector has recommended approval of this application, conditional to compliance with all applicable laws and regulations, and non-use of the onsite barn. Such a motion was made and seconded.

By a roll call vote:

Vice Chair Dr. Bevers – AYE

Member Ms. Dreyfus – AYE

Member Dr. Hunnewell – AYE

Chair Ms. Beardsley – AYE

The motion passed and the permit was approved with conditions. **APPROVED 4-0 with conditions**

7. **Tailgate Gourmet Catering – 2023 Temporary Mobile Food Vendor #TF23-55** – This vendor will be catering an event at Silverwood Farm on August 26, 2023. The Administrator stated that the Food Inspector has recommended approval of this application, conditional to compliance with all applicable laws and regulations, and non-use of the onsite barn. Such a motion was made and seconded. By a roll call vote:

Vice Chair Dr. Bevers – AYE

Member Ms. Dreyfus – AYE

Member Dr. Hunnewell – AYE

Chair Ms. Beardsley – AYE

The motion passed and the permit was approved with conditions. **APPROVED 4-0 with conditions**

8. **Tailgate Gourmet Catering – 2023 Temporary Mobile Food Vendor #TF23-56** – This vendor will be catering an event at Silverwood Farm on October 14, 2023. The Administrator stated that the Food Inspector has recommended approval of this application, conditional to compliance with all applicable laws and regulations, and non-use of the onsite barn. Such a motion was made and seconded. By a roll call vote:

Vice Chair Dr. Bevers – AYE

Member Ms. Dreyfus – AYE

Member Dr. Hunnewell – AYE

Chair Ms. Beardsley – AYE

The motion passed and the permit was approved with conditions. **APPROVED 4-0 with conditions**

9. **Sherborn Council on Aging – 2023 Food Establishment Permit #23-53** – The Administrator noted that while the application requests a permit for the COA’s weekly luncheons at Pilgrim Church (from September to May), the Food Inspector has indicated that this permit can also cover their other events, such as the annual BBQ at the Fire Station, provided all equipment is cleaned and sanitized at their base of operations, which will be Pilgrim Church. The Church has provided a letter, dated 8/8/23, agreeing to this arrangement. The Administrator stated the Food Inspector has recommended approval of this permit, conditional to compliance with all applicable laws and regulations, and conditional to the COA informing the Board of all events and providing a menu, but he has left the question of a fee waiver up to the Board.

The Chair stated that she has spoken with the Advisory Board Chair and the Select Board regarding interdepartmental exchange of fees, and she asked that the Board not be penalized with questions regarding why so much time is spent on food permits and food trucks. She stated that she would like to have a decision from someone in town as to whether it is viewed as an overall cost savings versus the time being spent on moving the money around. She noted the Board has seen a huge increase in food trucks in the past year. Dr. Bevers expressed support for minimizing excess accounting. Ms. Beardsley noted that the Administrator has collected information regarding applications over the past few years and noted a surprisingly high proportion of food permits are going to town groups. During budget review with the Advisory Board, the Board will have to explain the expenses noting that there will be no offsetting fee collection, also the efficiency side can be highlighted. In response to a question, Ms. Beardsley noted that due to the mandatory turnover on the Advisory Board, that Board’s institutional knowledge is lost and this Board needs to defend their budget request every year.

A motion was made to approve the food establishment permit for the Council on Aging, with a base of operations being the Pilgrim Church, conditional to compliance with all applicable laws and regulations, and it was seconded. By a roll call vote:

Vice Chair Dr. Bevers – AYE

Member Ms. Dreyfus – AYE

Member Dr. Hunnewell – AYE

Chair Ms. Beardsley – AYE

The motion passed and the permit was approved with conditions. **APPROVED 4-0 with conditions**

A motion was made to waive the fee for this annual permit, noting that the Administrator will keep records of all waived fees, and it was seconded. By a roll call vote:

Vice Chair Dr. Bevers – AYE

Member Ms. Dreyfus – AYE

Member Dr. Hunnewell – AYE

Chair Ms. Beardsley – AYE

The motion passed and the fee was waived.

**AGREED 4-0**

10. **Updated COVID-19 Information on Website** – Ms. Beardsley stated that recently, there was an issue in town about someone who was possibly infected with COVID-19, and there were questions about return-to-work protocols. She noted that there is guidance on the Massachusetts Department of Public Health (MDPH) website, as well as guidance on the Centers for Disease Control (CDC) website. The Administrator checked the isolation and exposure calculator on the CDC website and relayed that it is very helpful. Due to the concern of several town employees, a brief document, including links to several helpful



websites, has been added to the Board of Health website. Ms. Beardsley also recommended that interested people could also look at the MWRA wastewater data, noting that it shows a clear rise in the incidence of COVID-19 recently.

Ms. Beardsley asked if the Board felt we should reach out to the Dover Board of Health regarding the schools, but Dr. Bevers stated he was unsure we are at a space to take further action yet, but he did feel that further monitoring makes sense. He noted that hospitalizations caused by COVID-19 have not increased at this time.

Ms. Beardsley stated that the town should advise employees to follow the current DPH and CDC guidelines regarding return-to-work following COVID-19 infection, but she noted that it is not mandated by the State.

**11. APPEAL HEARING Continuation – 39 Wildwood Drive, Eduardo Rosa – Bedrock Disruption permit** (see Minutes of 7/19/23, 7/12/23, 6/21/23, and 6/7/23) – Damon Seligson, Esq., counsel for the appellant, was present, as was Arthur White, Esq., counsel for the permit-holder. Owner Eddie Rosa was also present. Town Counsel was present on behalf of the Board. Matthew Brooks, Scott Horsley, Brian Moore, Prof. Timothy Downs, and Dr. Mark Dershwitz, experts, were present to support the appellant. Many abutters and other interested parties were also present.

A motion was made to open this continuation of the Appeal Hearing, and it was seconded. By a roll call vote:

Vice Chair Dr. Bevers – AYE

Member Ms. Dreyfus – AYE

Member Dr. Hunnewell – AYE

Chair Ms. Beardsley – AYE

The motion passed and the Appeal Hearing continuation was opened. **AGREED 4-0**

Dr. Bevers reviewed the process to be followed, and noted that he believed the requirements for an Appeal Hearing was met as the Board received at least 3 expert opinions by the August 7<sup>th</sup> due date. He made a motion that the requirements for an Appeal have been met, and it was seconded. By a roll call vote:

Vice Chair Dr. Bevers – AYE

Member Ms. Dreyfus – AYE

Member Dr. Hunnewell – AYE

Chair Ms. Beardsley – AYE

The Board was in agreement that the requirements for an Appeal have been met. **AGREED 4-0**

Dr. Bevers stated that he would allow Counsels for each side to speak for 10-minutes, followed by questions from the Board.

Damon Seligson, Esq. stated that he represents the owner of 23 Wildwood Drive. He noted that on 8/7/23, they submitted multiple reports, and stated that those reports speak for themselves. He noted that the experts who provided those reports are present tonight and can answer questions. Mr. Seligson stated that this Board has the authority to regulate bedrock disruption in Sherborn, and he stated that it is the Board's duty to protect the community, and the residents. He stated that at least 3 additional reports were filed on 8/9/23, and at least 17 additional Sherborn families have sign on with their agreement. Mr. Seligson stated that he feels it is the Board's duty to reverse their decision to grant a bedrock disruption permit for this site. Mr. Seligson stated that the proposed project will result in excess of 350-cubic-yards of earth removal, and therefore requires an Environmental Health Impact Report. He also stated that 187-cubic-yards of bedrock will be disrupted. Mr. Seligson stated that he would be happy to answer questions from the Board, or at least direct those questions to the experts in attendance. Dr. Bevers responded that Counsel for the permit-holder will speak next, prior to any questions.

Arthur White, Esq., Mr. Rosa's attorney, stated that he, like Mr. Seligson, is not an expert in toxicology or geology. However, he noted that the Board first heard this application for bedrock disruption permit on June 7, 2023, and he stated that he has read the Minutes of that meeting. He noted that the neighbors were given the opportunity to participate and provide their input. The discussion was continued to the June 20, 2023 meeting, and at that meeting, many neighbors spoke. Mr. White stated that his client did all that was required of him under the regulations – he notified all abutters, he appeared before the Board with his engineer, and they answered questions. The Board issued the permit. Mr. White stated that there is no reason the permit should be revoked despite all the letters, exhibits, and information that has been presented to the Board by the appellant. Mr. White stated that it is a well-known fact that manganese is a valuable mineral that exists – and it is necessary for the health of all persons. While excessive amounts may not be, there is no proof as to what is going to happen when his client begins his project. He noted that Mr. Rosa has stated that there will be no blasting – everything will be done by hammering. He will remove all rocks and all debris from the site the day they are disrupted, and he will cover areas that are affected during the process of the house construction and the digging of the well. Mr. White stated that his client has relocated the house, which has significantly reduced the amount of disruption that will take place. He stated that the Board cannot and should not, based on hypotheticals, revoke the permit. He stated that there is no proof of what is going to happen on the site or that it is going to impact any of the neighbors. Mr. White also noted that it is his understanding that bedrock disrupted when many of the homes on Wildwood Drive were built and wells dug. It is only through this new regulation that there is a need for a permit. Mr. White stated that Mr. Rosa has met on numerous occasions with the neighbors, and he has tried to address their concerns. Mr. White stated that they did not go out and try to hire dueling experts, because it would be hypothetical. Rather, Desheng Wang, P.E., Ph.D. submitted rebuttals through a letter, and he is present if the Board has any questions. Mr. White suggested that the Board should leave the permit in place and deny the Appeal.

Dr. Bevers stated that he did read, in detail, all of the information submitted, and felt it could be broken down into a few categories. First, there was substantial information provided on the potential toxic effects of manganese, and he stated that is not in dispute. He is certainly aware of those potential toxic effects, and he felt the Board generally is also aware as well. Second, Dr. Bevers noted a number of materials provided were to provide evidence of the presence of manganese in the bedrock and in ledge, stating that the potential for disruption of rock could lead to the release of substances. He noted that also was not in dispute, and that all members of the Board acknowledge all of that. A third category of materials submitted included information not germane to the discussion of bedrock disruption. There were also questions about other issues that the Board will address later when the septic plan is discussed. Dr. Bevers stated that the regulation was adopted by the Board a few years ago, when he was not on the Board, but the key components of the regulation is that a permit is required, and the requirement for a permit is that all abutters are notified. Dr. Bevers noted that the abutters were notified, as required. The next issue regards “blasting”, and it was noted that there is no proposal for blasting here. The regulation finally says that the Board won't issue a permit unless these requirements are completed, and he felt that the completion of these requirements is not in dispute.

Dr. Bevers stated that he feels the Board could say the applicant meets the requirements, noting that he hasn't seen anything that suggests they didn't meet those requirements, so based on the regulation, the permit stands. He noted that could be one view, and he didn't know if the Board needed to consider it any further than that. However, he felt the Board should comment on the question of what is the potential harm, and he asked if this would cause certain and non-speculative harm to the appellant. The Board has seen, from comments from the experts, that we cannot be certain of what is going to happen. The experts note that it is uncertain if the onsite well will detect contamination, so it follows that we also can't be certain if contamination will travel to a neighboring well. Therefore, anything else is speculation. Dr. Bevers stated that he felt the goal of this regulation was to provide notification so neighbors could be aware



this is happening and they could look for any impact because of its potential, but not because it's a certainty.

Dr. Hunnewell stated that she was on the Board when this regulation was adopted, and also when the Board had their first experience with ledge disruption that had an effect on a down-gradient abutter. She stated that although the Board has this first regulation, she felt it could be improved, and she felt the Board has a responsibility to act on the information we have in the best interests of the public health of the town. She equated this with clinical practice, noting that practicing physicians sometimes have to go by their instincts and make a decision that is best for the patient with the information they have at hand. She stated in this case the Board has historical data, and historical evidence in developing countries where mining activities take place that there has been heavy metals, manganese, lead, and other toxins identified. Dr. Hunnewell stated that in Sherborn, the Board has evidence of the neurologic consequences that are harmful due to exposure. She stated that the Sherborn homeowner, as well as her children, were exposed to levels of manganese that were 40 times the EPA limit. She stated that this is uncharted territory, but she stated that doesn't mean the Board doesn't have the responsibility to be cautious. Dr. Hunnewell stated that, in this case, it appears that the homeowner analyzed her own rock, and she stated that was incredibly intelligent. She stated that the Board has objective data, and can't say they don't have any evidence that there could be risks introduced and that pulverizing and crushing the rock with heavy equipment is going to facilitate the leaching of that material into the water after a few rainstorms. Dr. Hunnewell stated that the Board can take measures to protect the abutters and the town aquifer and water supplies as a whole by asking them to put monies aside to be used in the future to remediate. She felt the Board could also require the removal of the materials as it is disturbed, and they can also be more cautious because the Board of Health is supposed to be thinking about public health. She noted that the Board has limited solutions once damage is done, so the Board needs to be smart, proactive, and conservative – because it is worth the risk.

Ms. Dreyfus followed up with a question for Dr. Hunnewell, asking, since Dr. Hunnewell was one of only 2 current Board members that was on the Board when this regulation was adopted, what was the *intent* of the regulation. Dr. Hunnewell responded that the biggest challenge at the time was perceived to be the rules or laws that are currently written to protect private property. The system of notification was controversial, and there was significant opposition from the town people who were present at the meetings to having any kind of regulation at all, so the amendment to include the cubic-yards of our threshold was made on the floor. Dr. Hunnewell stated that she was in the minority, and thought there should be no threshold unless the Board could prove safety below that threshold. Dr. Hunnewell felt the Board should get comments from the scientists and people more knowledgeable than she is. Ms. Dreyfus noted that she was not on the Board when the regulation was adopted, and she wants to understand. She stated that she did read all of the notes going back to 2017, and she stated that what she hears Dr. Hunnewell saying, which is consistent with her understanding, is that the intent of the regulation was to notify abutters, and she asked if that was correct. Dr. Hunnewell responded “yes”.

Ms. Beardsley stated that she was the other Board member who was on the Board when the bedrock disruption regulation was adopted. She stated that she has worked with public water supplies in their monitoring and performance, as well as other projects, including the Whitney Farms development when the town was trying to understand what kind of threats that project might pose to Holliston, which had their wells nearby. At that time, Ms. Beardsley stated that she had the opportunity to learn about the manganese and iron issues that Holliston faces, noting there is a different dynamic since they are overburden wells (meaning not in bedrock). Through that, she learned about the hazards of manganese and the health impacts around whether it is consumed or inhaled (via mist or showers). Ms. Beardsley agreed with Dr. Bevers, saying a lot of the information presented about the hazards of manganese was already known to the Board. She stated that was the driver for the regulation. She stated the Board tried to determine how to regulate it, asking what is the straight line between bedrock disruption and contamination and predictability. Ms. Beardsley noted that mining was referenced, but the scale and processes of mining are

enormously different than what we are talking about here. She stated that there weren't any research or regulatory documents about this issue she could locate, and the Board did not receive any. She noted that an interesting calculation done by Brian Moore indicates potential but was also speculative, and there aren't any clear studies to point to what actual impacts might be. She has spoken with various other government representatives and researchers who had looked at this issue associated with the increase in bedrock disruption for the development of marginal lands, and no one has been able to come to a conclusion that is the kind of information the Board needs. Ms. Beardsley noted that she deals with regulations all the time, and has worked with regulatory updates with government authorities, noting that kind of data gets used before setting something into a regulation. She noted that is why the Board came up with this alternate approach, which lets people know and prepare for a potential risk. She noted an earlier comment about setting aside funds to deal with any repercussions that might result, and she stated that the current regulation would kick that over into the court arena and civil matters of harm. On the positive side, Ms. Beardsley noted that Mr. Rosa has agreed to take all of the right measures to minimize exposure of large surface areas of the disrupted bedrock – they are going to cover areas and materials that are disrupted, and will remove the material from the site the same day. Those measures will minimize the hazard. The property owner has also offered to share the results of his well sampling analysis results. While that is not a guarantee that his well will be the first to intercept something, it is an excellent step. She stated that the Board can't find the evidence it needs to support more than what the current regulation states.

Ms. Dreyfus stated that she was not on the Board when this was originally discussed, and she felt it was very helpful to hear the circumstances that led to the regulation, as well as the intent. Noting that what the regulation states is all the Board has in their "toolbox", she stated that she feels the regulation has been met. All of the abutters have been notified, and that has not come into question. Blasting is not going to happen. She stated that she found all of the information that was submitted was incredibly interesting, dynamic and complex, and it showed that this is an issue that is worth this level of discussion. However, she maintained that this is a speculative risk and is not a foreseeable risk. She stated that Mr. Rosa has complied with the regulation, as it is stated. She did not see any need to revoke the permit at this time.

Dr. Hunnewell stated the Board should listen to what the experts have to say, saying the Board should learn from their mistakes and not keep making the same mistakes and wait until "Sherborn is a nice little cohort of people with contaminated property, contaminated drinking water, loss of property value, and loss of health".

In response to Dr. Bevers' inquiry regarding if the Board members had any questions, Ms. Beardsley asked about any scientific connection between bedrock disruption and some sort of predictability about what the outcomes are – such as, does the size of the pieces that you create matter? Dr. Hunnewell asked if the Board was going to listen to the experts tonight, or just repeat the vote from the last time. Dr. Bevers responded by noting that the Board all received written documentation from the experts, that was reviewed by the members prior to this meeting. He stated that he has asked if the Board members have any specific questions for the experts beyond what was presented in the written documentation. Dr. Hunnewell stated that she believes there *is* new information, noted the appellant homeowner did rock analysis of the rock on her property – it has manganese, and also lead – and she asked why the Board is not considering this new information. Dr. Bevers stated that the Board is considering all of the information presented. Ms. Dreyfus stated that what made that information difficult for her was that analysis was done by a de-certified lab. Ms. Beardsley agreed, and stated that the Board did already know about the composition, stating that it is in USGS maps that identify the type of granite we have. She also agreed with Ms. Dreyfus that the lab that provided the analysis was decertified, and she noted that it was decertified because it wasn't following standard drinking water quality testing requirements of MassDEP.

Dr. Bevers offered representatives of the appellant and homeowner to provide a response or comment on what has already been stated, clarifying that this is not an open comment period.

Mr. Seligson stated that the Board's strict reading of the bedrock disruption provisions handcuffs them in terms of what they can do as a Board, stating that it sort of defeats the purpose of the existence of the Board. He stated the goal here is to protect the community. He stated that the experts present will gladly state that the danger is not speculative, but is foreseeable. Mr. Seligson stated that Dr. Brooks wished to make a comment.

Dr. Matthew Brooks thanked the Board for allowing him to come before them. He stated that he has known "Rebecca" for a number of years, and stated that he was doing this more as a "friend". Dr. Brooks stated that he has a company called Clifton Water Works, and he is a class 4 engineer in Northern Virginia, which means he can take care of any town of 5000 people or less in their water systems. Dr. Brooks stated that there are 4 restaurants and a daycare center in Clifton, and he noted that everyone is on a well. Clifton is one of the last towns in Northern Virginia that are on wells, and every week he has to go and measure all these chemicals that the Board is now talking about, as well as the unaccredited situation that he just heard for the first time. Dr. Brooks stated that from his report, he is looking at 5-ppm Lead, thousands of Iron, and 130 of Manganese, which are all significantly high. Then, he said he has a TCLP, which is a "toxic characteristic leaching potential" report which tells him that the way they are right now, they aren't going anywhere – they are literally locked in that bedrock. So, if you bust that up, the question becomes, which way is the water flowing? If it comes back toward the houses they are building, they are going to have issues. If it goes the other way, towards the abutters, they will have issues. He noted that the builder rebutted the need to have monitoring wells along those edges. He stated the contractor needs to put systems in those homes to protect them – not wait until they find out they can't drink their water.

Mr. Seligson stated that the reports he submitted all speak for themselves and he felt the information was more than speculative, and he asked Professor Timothy Downs speak. Mr. Rosa's attorney thought the Board was accepting only rebuttal statements, and he noted that both Mr. Seligson and himself each had the opportunity to speak. Dr. Bevers allowed Mr. White to comment.

Mr. White stated that Mr. Rosa and his team did everything required in the bedrock disruption regulation, noting that they applied for the permit, they notified the abutters, and they have indicated that there will be no blasting. He noted that the regulation stated that "a permit shall not be issued until there is acceptable completion of the above requirements". He stated that this has been done and that there will be no blasting. Mr. White stated that, at the 6/7/23 meeting, 7 neighbors spoke. At the 6/21/23 meeting, 8 neighbors spoke. He noted that we are talking about "potentials", and he stated that everything is speculation – everything is hypothetical. Mr. White stated that Mr. Rosa deserves the opportunity to construct his property, and he is doing it as safely as possible. Mr. White again stated that he believes this Appeal should be denied. He stated the Board is well aware of the existence of manganese and the existence of rock. Mr. White appreciated Mr. Seligson's provision of all of these experts, but stated the bottom line is that the Board must make a decision based on what the regulations say. As those regulations exist right now, the Board should allow Mr. Rosa to move forward with the permit the Board approved 2-months ago.

Noting that several experts had their hands up, Dr. Bevers asked for a sense of the Board, saying that he didn't want to allow a re-hashing of what has already been presented in the written reports. But, if there is something new that the experts want to add that they feel was not conveyed or was misconstrued, he'd be fine with hearing that. But he did not want a verbal report of what was presented in written form. Ms. Beardsley and Ms. Dreyfus agreed. Expert Mark Dershwitz stated that he had something to say which was beyond what he had written.

Dr. Dershwitz stated that, in our society, it is customary to demonstrate that something is safe before it is available to the masses. He stated that there is no evidence that the process of bedrock disruption is safe, and there is much anecdotal concern that it is not. He stated that the Board of Health should not play "Russian Roulette" with the town's groundwater – which is what they are doing.

Professor Timothy Downs stated that he disagrees with the Board's belief that we are just talking about hypotheticals. He stated that it is a fact that there is manganese in the bedrock. He stated that it is actually a fact based on the Massachusetts water quality data that Sherborn has above average exceedances of the lifetime Health Advisory levels in the monitoring data he looked at. Prof. Downs stated that he is co-author of a 2023 paper that has been used as part of the body of evidence here, and he disagreed that he is being speculative. He stated that the amount of bedrock to be disrupted – which means pulverized – meaning that the manganese it contains becomes able to be mobilized by rainwater. The downgradient properties are of sufficient proximity that there is a potential risk. So, this is not hypothetical, and it is not speculative – these are foreseeable risks and they should be taken seriously.

Scott Horsley (shown as “iPhone Scott”) stated that there is an important linkage, in his opinion, between the compliance with notifying abutters and other regulatory compliance issues and that is the depth to groundwater underneath the foundation of the property. He noted that the Board's regulations require a 2-foot separation. He stated that everyone agreed in the past that groundwater tracks the bedrock surface, and that is absolutely true. Mr. Horsley stated that the final submittal by the applicant's engineer is making an exception and saying that is not happening here. Mr. Horsley felt that was “cherry picking data”. He stated that according to their submittal, the 2-feet to groundwater has not been met and increases or provides a vulnerability where this contamination of groundwater via pulverizing of the bedrock. Mr. Horsley stated that maybe they've complied with the bedrock disruption regulation, but they do not comply with the depth to groundwater. He stated that groundwater does track on top of the bedrock during estimated seasonal high groundwater.

Ardys Flavelle commented on the state her water was in following building behind her. She noted that the acceptable level for manganese is 0.05, and 7-months after the construction behind her, the level was at 5.58.

Brian Moore stated that the Board is looking for a direct line of evidence that such a condition that is predicted is going to occur, and he noted that it has already occurred from this very rock right down the street, and he stated the Board should consider their willingness to appeal this permit based on the fact that there already has been a demonstrated correlation between bedrock disruption and an increase in manganese in the water in this very neighborhood.

Dr. Bevers stated, at this point, the Board would be taking no further comments. Ms. Beardsley mentioned that she agrees that it is not completely speculative, but the magnitude and the specifics of how the bedrock is disrupted and managed and then what results from that is not something the Board has a firm grasp on. There is limited understanding of what went on at the other location in town. The Board does not have great insight into that because the developer was not inclined to share information with the town, especially after this happened. However, from observations from neighbors or passers by is that the material was left on the property to be used as fill. She stated that it is all the details about what will lead to what, and that is what the Board has not found any documentation on, or studies of.

Dr. Hunnewell stated that she felt it would be irresponsible of the Board not to take a moment to improve personal protections for the homeowners and abutters, and others whose drinking water will be affected by such a significant amount of ledge pulverization and destruction. Not only do private property owners have a right to do whatever they like with their private property, but every person deserves to have safe and clean drinking water. She stated the Board should take measures and precautions that will actually protect, in a proactive manner, drinking water. She stated that it is unfair to put abutters at risk in this way when we have evidence of things that happened in the past. She stated that that entire family has been exposed to neurotoxic manganese and could potentially have progressive neurologic disease in their lifetime. She stated that this Board should actually think about public health and be smart and protect our natural resources in Sherborn.

Dr. Bevers stated that we all acknowledge that there is a potential for risk here, and that is why this regulation was adopted. At the same time, he noted that the applicant has fulfilled the requirements of the



regulation. While we acknowledge the potential for risk, we cannot prove a certainty of risk, and therefore the risk is speculative. Therefore, he moved that the Board deny the Appeal, thereby allowing the bedrock disruption permit to stand. Dr. Hunnewell asked at what point could she have the opportunity to request some provisions to be required of the developer, and Dr. Bevers responded that first the Board would need to vote to uphold the permit, after which she could make a further motion with other requirements. Dr. Hunnewell stated that if the Board votes to allow them to proceed, she would propose the Board require provisions of precautionary measures to be taken and become the responsibility of the developer. Dr. Bevers responded that the Board has already required provisions. If the Board were to require anything additional, that should be a separate motion. That should occur only after the Board votes to uphold the permit, if that is what they do. Ms. Beardsley had a question about process, noting that the Board discussed provisions and whether to make them when the permit was first voted. This is now an Appeal – a yay or nay for what was already approved, and is not a reopening of what was already voted. Dr. Bevers reviewed the process followed when the permit was first approved, and stated that he wanted to move forward at this time with the vote on the Appeal.

Dr. Bevers re-stated the previous motion to deny the Appeal, and that the bedrock disruption permit stands with the notation that the requirements of the regulation have been met and that nothing presented tonight argues otherwise. The motion was seconded. Dr. Bevers noted that an “AYE” vote would leave the permit in place, and a “NAY” vote would revoke the permit. Ms. Beardsley commented that she has spent her entire career working on preventing pollution in a wide variety of ways around the globe, so she fully appreciates the concerns around this. She stated that she has searched for years to find the information that she thinks would be defensible in court should the Board be challenged for not permitting bedrock disruption, and that is what she has not been able to find. She again stated that part of avoiding that happening is to have the good management practices that Mr. White and Mr. Rosa have expressed willingness to implement. With no further comments, Dr. Bevers called for a roll call vote:

Vice Chair Dr. Bevers – AYE

Member Ms. Dreyfus – AYE

Member Dr. Hunnewell – NAY

Member Ms. Beardsley – AYE

The motion passed and the Bedrock Disruption Permit was upheld and the Appeal Denied.

**AGREED 3-1**

**Bedrock Permit Upheld / Appeal Denied**

Dr. Hunnewell made a motion that the Board require, with the building permit, that monitoring wells be placed around the perimeter of the work and at the abutters’ property lines, as well as some kind of fund for remediation if anything happens, because it is going to be next year after a rainy spring. Dr. Bevers clarified that Dr. Hunnewell’s motion is to require the placement of monitoring wells and the establishment of a fund, and Dr. Hunnewell replied “yes”. Dr. Bevers stated that he didn’t believe the Board had a mechanism or the authority to do that, and he asked for comments from the other Board members. Ms. Beardsley stating that this would be no guarantee, without placing those monitoring wells immediately adjacent to one another all around the perimeter and getting samples from just the right depths, and would be almost impossible to implement. Ms. Beardsley stated she therefore was having a hard time with that. She also noted that we don’t have any details on what kind of fund or how large. Dr. Hunnewell responded that “we could make it up”, saying the Board should try to protect the drinking water and have a way for the “poor down gradient homeowners” to have some assistance if we allow irresponsible projects to take place in town. Dr. Bevers noted there was a motion on the table and he asked for a second. The motion failed for lack of a second.

Dr. Bevers made a motion to close the Appeal Hearing for the bedrock disruption permit at 39 Wildwood Drive. A resident, “Prashant” interrupted, saying the Board was not allowing anyone to



comment on this, and Dr. Bevers responded that the Board heard from the experts, and was not taking additional comment at this time. Dr. Hunnewell stated that the Board hasn't even considered that this is an open meeting, but Dr. Bevers responded that it is an open meeting, meaning that everyone is able to listen to the meeting – it does not require the Board to have public comment. He noted that the Board has heard from representatives of both sides, and they have heard from the experts. We've had a vote and he has made a motion to close the Appeal Hearing. Ms. Dreyfus seconded the motion to close the Hearing. The resident continued to interrupt, and Ms. Beardsley noted that the Board had required all information to be submitted by a certain date so the Board would have time to review it in advance of this Hearing, so taking additional comments outside of that is not acceptable. Dr. Hunnewell thanked the Board for "hiding behind the regulations". Dr. Bevers called for a vote. By a roll call vote:

Vice Chair Dr. Bevers – AYE

Member Ms. Dreyfus – AYE

Member Dr. Hunnewell – NAY, with the comment that "Democracy includes public comment, but apparently not here."

Chair Ms. Beardsley – AYE

The motion passed and the Appeal Hearing was closed.

**AGREED 3-1**

**APPEAL HEARING CLOSED**

Dr. Bevers noted that there had been extensive public comment at the earlier meetings, and he noted the Appeal Hearing was now closed.

12. **39 Wildwood Drive, Eduardo & Michele Rosa – New Septic / New Well #23-14/15** (see Minutes of 7/19/23-#12 and #13, and the Minutes of 6/21/23-#8) – Owner Mr. Rosa was present with his engineer, Desheng Wang, P.E., and attorney, Arthur White. Many abutters and other interested persons were also present.

The Agent noted that this submittal has been through several revisions, with the most recent being 8/15/23. The Agent noted that the engineer had been asked to show the drainage structure on the plan, and it is now included on the profile. He recommended approval of the plan, last revised 8/15/23, as submitted, conditional to the garbage grinder prohibition deed recording.

Ms. Beardsley noted that the Board has seen this sort of analysis before, and the Agent agreed, noting that the precedent was on Green Lane. Ms. Beardsley stated that she believes what Scott (Horsley) was talking about, and what this Board has always done, is assume that groundwater begins at bedrock, and if you take away some bedrock, it still begins at bedrock. The Agent agreed, stating that is how the Board handled it for the previous project (on Green Lane). The Chair stated that since the Board's concern is that moisture not build up inside the shell of the house in a way that would be harmful to the occupants over time, from mold and whatever else, and so drainage away from the house under these circumstances became the method to require. She asked the Agent if he was satisfied that the engineer has incorporated everything required, and the Agent stated that he was. It was noted that the plan shows the drain surrounding the entire foundation, which is what the Board requested, and it daylights in a certain portion.

Ms. Beardsley stated that bedrock disruption activities will be a part of developing this site, and she asked if there were any arrangements with the applicant or the design engineer for the Agent to visit the site to check on how the work is progressing, and the Agent responded that in prior discussions, the Board had made that stipulation. He stated that the Board, if they so wish, could request the applicant to put it in writing, but he noted that the agreement had been that the ledge not be pulverized, but rather taken out in chunks and either removed from the site immediately, or covered. The Agent noted that the well needs to be drilled, and potability proven, prior to the foundation going in, but he did note that a "foundation only permit" could also be allowed, but he stated that he would bring that to the Board's attention prior to approving such a request. Dr. Bevers clarified that the Board is voting on the potential approval of the

septic system plan, including the new well location. They will be required to drill the well and prove potability (quality and quantity) prior to issuance of a building permit.

A motion was made to approve the new septic/new well plan as presented, conditional to a garbage grinder prohibition deed recording, and it was seconded. By a roll call vote:

Vice Chair Dr. Bevers – AYE

Member Ms. Dreyfus – AYE

Member Dr. Hunnewell – AYE

Chair Ms. Beardsley – AYE

The motion passed and the plan was approved with condition. **APPROVED 4-0 with condition**

### 13. **Town of Sherborn – Irrigation Wells -**

(A) **Laurel Farm Recreation Area (139 No. Main St.)– Irrigation Well A (#23-44)** and

(B) **Laurel Farm Recreation Area (139 No. Main St.) – Irrigation Well B (#23-45) –**

Town Administrator Jeremy Marsette was present with DPW Director Sean Killeen, Ray Talkington, President and Principal Geologist of Geosphere Environmental Management Inc., Matt Krapf, Project Manager from Geosphere, and Jeff Bowman, Irrigation Consultant/Manager for the town. The Agent reviewed the plans, noting that they are for irrigation of the playing fields at the Laurel Farm Recreation Area. He noted that a challenge he's not sure of which they are aware is that they will need electricity near the wells to ensure the pumps have the needed power. Mr. Bowman responded that they don't know if they are going to find any water, stating that at this point they are waiting to drill the wells. The Agent requested that revised engineered plans be provided showing the well shed and power lines *before* either well is drilled.

Ms. Beardsley noted that these irrigation wells differ from those for residences, and she asked the applicants to describe the need for irrigation. Mr. Bowman responded that during times of insufficient rainfall, they want to deliver a safe playing surface, and he noted that irrigation will *not* be scheduled, until there is a deficit, if it does rain. He stated that the town is budget-limited, and will look at yield later, but he stated the average daily demand during times of insufficient rainfall would be between 7,000 and 20,000 gallons/day. The higher limit would be for irrigating two fields, but they might find they can't do that. Ms. Beardsley noted originally learning about organically-managed turf fields from the Town of Marblehead, where the goal is to promote deep root growth – without daily watering. She stated that she understands the need for irrigation when you are trying to establish fields but that the Board of Health is concerned because, in times of low rainfall and certainly during a drought, they do not want water being diverted from drinking water supplies to irrigation. She noted that is a tricky balance: when they might want to irrigate the most is when the Board would least like such watering to take place.

Ms. Beardsley stated that a second step would be the pump testing, noting the Board will need to understand how the irrigation will affect the water supply in the area, and any wells that might be hydraulically connected to whatever fractures the irrigation wells might be connected to. She noted that they will not be able to provide those answers until after the wells are drilled, but she stated that those are questions the Board will ask. She envisioned the 2-step process:

- First, if the Board agrees there is a need for the wells, they could permit the wells with the condition that the Board will review the irrigation management plan later.
- Second, noting that when other larger draw wells have been drilled in the past, there has been monitoring performed on surrounding properties. The Board would need to determine that as well. She asked about the length of the pump test, noting that 4-hours would not be close to what such pump tests have been before.

Matt Krapf from Geosphere stated that they would be conducting the hydrogeological evaluation of the pumping of those wells, and he agreed the Board's typical 4-hour pump test would not be adequate, and Geosphere would assist with making the determination of the proper pump test length. In response to a

question from Ms. Beardsley, he stated that when they evaluate wells long-term, they are looking more from the public water supply side. He noted that DEP has some requirements for long-term testing, noting that goes anywhere from 7-days to 15-days, or on a case-by-case basis, but he noted it could be somewhere in between. He stated that, reasonably, we'd probably be talking a couple of days to determine immediate close-by impacts, and then possibly a little longer, depending on how far out the Board wanted to reach.

Ms. Beardsley asked if there was any opportunity to look at impacts on surface waters, and Mr. Krapf responded that when they monitor overburden wells, they will monitor surface waters (wetlands, rivers, streams, vernal pools, etc.) because there could be connections and they always err on the side of caution and monitor it to prove either a positive or negative impact. Ms. Beardsley noted another issue is that not all neighbors will be willing to have their wells monitored.

Ms. Beardsley, noting that currently, people take water from the ground, use it in their home, and then discharge it to the septic system and it goes back to the ground. There is not a lot of evaporative loss. However, there *is* a lot of evaporative loss with irrigation and she asked the irrigation consultant what percent of the water is expected to be evaporative loss. Mr. Bowman responded that the goal would be 100% of the water would *not* be returned to the ground because if that is occurring, you are over-irrigating; you are saturating the spaces in the soil and you are starving the lawn. He stated that 100% of the water they'll use for irrigation will be retained in the root zone of the plants for subsequent use by the plant. They want to irrigate every 2-3 days in the absence of rainfall in order to have the grass go deeper to try to find water. He noted that the deeper the root zone of the grass, the less susceptible it is to short-term drought. Mr. Bowman stated that the soils in the area are fairly heavy, and they are working through that. He stated that this will be in the irrigation management plan. Mr. Bowman reviewed that the irrigation will not take place every day, as they do not want to have any irrigation schedule resulting in drainage to the groundwater.

Noting the hour, Dr. Bevers reviewed that this will be a multi-step process, with the first question being if the Board can approve these irrigation wells. Next, once they have been drilled and found to be successful, there should be a longer discussion and review of the plans going forward. Ms. Beardsley agreed. The Agent suggested the Board vote on whether or not to approve these wells, and if they vote to approve, it should be conditional to the Board of Health review of the irrigation management plan prior to any use of these wells. In response to a question from Ms. Beardsley, the Agent stated that prior to the Board review of the irrigation management plan, they will have to pump the wells to determine the quality and quantity.

Mr. Krapf stated that as the drillers are drilling the wells, they have the ability to give rough estimates of what the yield would be, so he felt that would be the first driver. If they have high yielding wells, they can then determine how much water they will need to take. If they determine they will be taking a larger number of gallons per day, it might be a longer-term test to allow the impacts to really reach out into the bedrock and see what the impacts will be. He stated that Geosphere would reach out to the residents regarding monitoring their wells, stating they do this regularly. Mr. Krapf stated that there is no immediate need to do the pump testing after the wells are drilled.

Ms. Beardsley stated that it now would be a 3-step process:

- First, the Board must agree that these irrigation wells are needed,
- Second, the Board will review and approve the pump testing plan, along with abutter notification,
- Finally, the Board shall review and approve the Irrigation Management Plan.

Dr. Hunnewell stated that she is not convinced of the need for irrigation wells, noting that depletion of the aquifer and other issues lead to risks to drinking water. She feels the Board should protect the natural resources, and noted that the fields have done fine during droughts over the past 30-years.

Resident Bob Murchison stated that he is not opposed to this, and he brought up a comparison with 40B projects – both in the past and those that are proposed. He pointed out that what is being talked about here at times of peak usage is about triple the size of 40B's previously built in town as well as those that are

proposed. He felt this triple the usage of water on a property is important to remember. He expressed concern that the town might spend hundreds of thousands of dollars on this project, and then might find out that the Board isn't comfortable with it.

A motion was made to approve the 2 irrigation wells as proposed, conditional to (1) Board of Health review of the plan for pump testing and abutter notification prior to conducting such testing, and (2) Board review of the irrigation management plan prior to the use of the wells for irrigation, and it was seconded for discussion. Ms. Dreyfus stated that she still needs to be convinced of the need for these wells. DPW Director Sean Killeen reminded everyone that Town Meeting voted against the Recreation Commission's request to install turf fields. He stated that several people on this Board and other Boards basically said to come back with a plan to make good fields, and everyone knew that irrigation was part of it. He stated that the area is a gravel pit and needs to be irrigated to get good grass. Mr. Killeen stated that the Select Board and Town Administrator support this project, and there is ARPA funding for it. He felt this was a "heck of a time" to renege on it because the grass is not going to grow itself through a drought such as last year. Dr. Hunnewell responded that she still is not convinced this is needed, because of the fragile resources. Ms. Dreyfus felt the devil is in the irrigation management plan to ensure we can meet all of the needs. Dr. Bevers agreed, stating that the checks are appropriate to ensure this can be done in a safe and hopefully sustainable way. If the town spends all this money and finds out that we don't feel this is a safe option in terms of use of our natural resources, it would be unfortunate. He stated that we need to have checks in place, but he didn't think that would stop us from moving forward. Ms. Beardsley noted that the financial decisions have been made at a different level of departments in town, and is not in the Board's purview. She stated that we should not be trying to grow grass on gravel – we should be trying to grow grass on better quality soils. From what she has read, watering once a week at the most is sufficient so the root depth could approach 18-inches. Dr. Bevers called for a vote:

Vice Chair Dr. Bevers – AYE

Member Ms. Dreyfus – AYE

Member Dr. Hunnewell – NAY

Chair Ms. Beardsley – AYE

The motion passed and the permits were approved with conditions      **APPROVED 3-1 with conditions**

14.      **108 Coolidge Street, Coolidge Street Homes 40B – letter to Mass Housing** – Dr. Bevers noted that Ms. Beardsley had provided a draft letter, with comments similar to those made in the past for similar projects, and he noted that he had reviewed it prior to the draft being provided to the Select Board. He stated that he felt the Chair addressed the Board's concerns correctly. Both Ms. Dreyfus and Dr. Hunnewell agreed. A motion was made to approve the comment letter drafted by Ms. Beardsley, and forward it to the Select Board, and it was seconded. By a roll call vote:

Vice Chair Dr. Bevers – AYE

Member Ms. Dreyfus – AYE

Member Dr. Hunnewell – AYE

Chair Ms. Beardsley – AYE

The motion passed and the draft letter was approved.      **APPROVED 4-0**

15.      **ZBA Petitions for Hearings on 9/6/23** – Ms. Beardsley expressed concern that both the Greenwood Street Development 40B and the Farm Road Homes 40B are on this agenda, and no one from the Board of Health can attend as the Board meets that same night at the same time. She reviewed the other two petitions, one being a renewal of a Special Permit to operate a retail store with signage at 11 South Main Street, and the other a request for a Finding to renovate a pre-existing, non-conforming house at 6 Curve Street. Ms. Beardsley noted that once they receive ZBA approval, the applicants need to follow the

typical process of going through any other Boards or Committees. The Agent noted that the Board needs the additional back-up information that typically accompanies the notice.

The Administrator was instructed to send her typical letter regarding the need for Board of Health review, and she will also note the Board's inability to attend for discussion of the two 40B's due to the conflicting meetings.

16. **MassDEP Annual Notice to Boards of Health** – The Chair noted receipt of this document, and commented that it includes a lot of information about what the Board does. The Administrator noted that the last page includes a clear definition of *Public Water Supplies*. There was a somewhat lengthy discussion about various aspects of this document.

17. **Eversource Energy – power line right-of-way 5-year Vegetation Management Plan 2023-2027** – Dr. Bevers noted that this document is similar in spirit to what the Board has received for the railroad, but noted that this is for Eversource, basically letting us know they will be applying herbicides along the power lines. Ms. Beardsley asked if anyone felt the Board should respond to this, and Dr. Bevers thought that was reasonable, since it is similar to what the Board has responded to for the railroad. He stated that this would be just to ensure the Board documents their concerns about private wells. Ms. Dreyfus commented that she didn't get the impression that they were looking for a response, and Dr. Bevers responded that they typically do not. DPW Director Sean Killeen asked why the Board felt they should respond to this, and Dr. Bevers responded that they probably don't need to. Mr. Killeen stated that if they don't do herbicide, they would have to do mechanical, and he asked if the Board wanted that. Ms. Beardsley responded that, from a groundwater protection perspective, they would. Ms. Beardsley understood it is a difficult balance but also felt letting them know that everyone here has private wells could be a nudge in the direction of using only what is necessary. Noting that there is no deadline (or even a request) for a response, Ms. Beardsley stated that she would work on drafting a letter as time permits.

18. **2022 Annual Consumer Confidence Reports and Certifications** for public water supplies:

(A) **The Fields at Sherborn** – It was noted that no PFAS results were included in the report.

(B) **Leland Farms**

(C) **Woodhaven Elderly Housing**

The Board noted receipt of these required annual reports, noting that they are provided to all of the residents impacted (either directly or by posting in a central location). Ms. Beardsley stated that she did not note anything dramatic in any of these documents.

19. **Minutes** – It was noted that the Minutes of 7/19/23 had been reviewed. A motion was made to approve these Minutes as amended, and it was seconded. By a roll call vote:

Vice Chair Dr. Bevers – AYE

Member Ms. Dreyfus – AYE

Member Dr. Hunnewell – AYE

Chair Ms. Beardsley – AYE

The motion passed and the Minutes were approved as amended. **APPROVED 4-0 as amended**

20. **9/6/23 agenda items to date** were reviewed. The Administrator stated that several variance hearings were already scheduled. The Heritage engineering report will again be discussed, and the owners of 81 Brush Hill Road will be invited to discuss the Order sent about the complaint received and the possible rental of this house. The Board will discuss the regulations at an early meeting start time on 10/4/23.



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

By a roll call vote:

Vice Chair Dr. Bevers – AYE

Member Ms. Dreyfus – AYE

Member Dr. Hunnewell – AYE

Chair Ms. Beardsley – AYE

This virtual meeting adjourned at 10:57 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 8/23/2023 MEETING**  
**(All items stored in the Board of Health files unless otherwise noted)**

1. **20 Morse Road** –
  - Septic Replacement plan #23-28, drawn by GLM Engineering and dated 5/12/23
  - Variance request letter dated 5/12/23 from Robert Truax, P.E.
  - Certified list of abutters from the Assessor's office dated 5/18/23
  - Copy of abutter notification letter from Robert Truax. P.E.
  - Certified mail return receipts (green cards) and/or usps.com printouts from abutter notification letters
2. **PWS – 2022 Consumer Confidence Reports and Certifications** –
  - Fields at Sherborn
  - Leland Farms
  - Woodhaven Elderly Housing
3. **MassDEP** –
  - 2023 Annual Notice to Local Boards of Health
4. **Public Hearing on Proposed Regulations Changes** –
  - Proposed changes to Regulations I, II, and III
5. **Eversource Energy** –
  - 2023-2027 Five-Year Vegetation Management Plan
  - Central-Eastern-South-Eastern VMP 2023-2027
6. **Heritage of Sherborn** –
  - 7/28/2023 Food Establishment Inspection Report

- Photos taken during 7/28/2023 inspection
  - 8/7/23 Pest Control inspection report
  - 8/12/23 Re-Inspection report
  - 8/16/23 ORDER letter
7. **39 Wildwood Street – Appeal –**
    - Appeal letter from Atty. Damon Seligson, received 7/5/2023
    - Atty. Damon Seligson 7/17/2023 letter requesting continuance of Appeal Hearing
    - Updated ledge disruption request from Creative Land & Water Engineering, 6/21/2023
    - 7/19/2023 letter from Atty. Damon Seligson with attachments (spreadsheet of residents supporting the appeal, 7/18/23 written report from Scott Horsley, and report from Brian D. Moore, including his resume)
    - 8/7/23 letter from Atty. Damon Seligson titled “Submittal of Materials in Support of Appeal”, with multiple attachments
    - 8/9/23 information received from Atty. Damon Seligson titled “Supplemental Submission for Appeal”, with additional documents
    - 8/15/23 letter from Desheng Wang, Ph.D., P.E., C.W.S., subject: “Bedrock Disruption, 39 Wildwood Drive”
    - Credentials of Desheng Wang, Ph.D., P.E., CWS CSE
  8. **39 Wildwood Street – Septic/Well**
    - New septic / New Well plan #23-14/15, last revised 8/15/23
  9. **81 Brush Hill Road –**
    - Emails regarding status of septic replacement plan
    - 8/2/23 Investigation and ORDER letter
  10. **Coolidge Street Homes 40B, 108 Coolidge Street –**
    - Draft BOH letter to Mass Housing dated 8/22/23
  11. **Laurel Farm Recreation Area –**
    - 139 North Main Street, Town of Sherborn – Irrigation Well A - #23-44
    - 138 North Main Street, Town of Sherborn – Irrigation Well B - #23-45
  12. **COVID -19 –**
    - Updated COVID-19 Informational document posted on BOH website
  13. **Temporary, 1-Day Food Establishment Permits –**
    - Off the Vine Catering – Temporary Food Establishment Permit #TF23-54 – 9/2/23 at Silverwood Farm
    - Tailgate Gourmet Catering – Temporary Mobile Food Vender Permit #TF23-55 – 8/26/23 at Silverwood Farm
    - Tailgate Gourmet Catering – Temporary Mobile Food Vendor Permit #TF23-56 – 10/14/23 at Silverwood Farm
  14. **2023 Food Establishment Permit –**
    - Sherborn Council on Aging – Public Institutional, Non-profit Permit #F23-53 - annual
    - 8/7/23 letter from COA Director Susan Kelliher requesting a waiver of the fee for this permit
    - 8/8/23 letter from Kate Svirsky, Administrator of Pilgrim Church – allowing their facility to be the base-of-operations for this permit holder
  15. **ZBA Petitions for Hearings on 9/6/23 –**
    - Legal Notice only
  16. **Minutes –**
    - BOH Meeting Minutes of 7/19/23
  17. **39 Wildwood Drive –**
    - New Septic/New Well plan #23-14/15, drawn by Desheng Wang, P.E. of CLAWE, last revised 8/15/23
    - Soil & Groundwater report, received 3/22/23 from CLAWE