

**VIRTUAL
SHERBORN
BOARD OF HEALTH MEETING
MINUTES
October 18, 2023**

Members Present: Daryl Beardsley, Chair, Matt Bevers, MD, PhD, Diana Hoek, and Rebecca Hunnewell, MD

Members Absent: Julie Dreyfus

Others Present: Courtney Ek, Elizabeth Davidson, Jane Rosengard, Helen Braithwaite, Paige Brodie, Carmen Ng, Ratna Nararyan, Daniel Hopkins, Alysse Wurcel, Laura & Paul Hartnett, Scott Embree, Steve Paton, Leonardo DaSilva, George Morgan 1961, Sarah Tipton, Marion Neutra, Zenya Wild, Scott Hirsch, Laura Mastrobuono, Adam Henry, Daniel McIntyre, P.E., David King, Robert Kozak, Roger Stern, Eddie Rosa, Robert Meltzer (“1978...289”), P.J. Connors, Brooke Yarborough, “Courtney”, Gabe Scherrish, Tom Curran, Food Inspector, and Mark Oram, Health Agent.

By a roll call vote:

Vice Chair Dr. Bevers – Present

Member Ms. Dreyfus – Absent

Member Ms. Hoek – Present

Member Dr. Hunnewell – Present

Chair Ms. Beardsley – Present

This VIRTUAL meeting came to order at 7:01 PM via Zoom. It was noted that all votes shall be taken via roll call vote.

1. The Vice-Chair noted the members present and reviewed the agenda, and clarified for the many attendees that the discussion about *39 Wildwood Drive* would take place after the scheduled 7:30 PM variance hearing. He noted the following items not anticipated by the Chair 48-hours in advance of the meeting, requesting that they be added to the agenda:

(1) Despres Landscape & Excavation – 2023 Installer Permit renewal #I23-28

(2) House Bill H.2104 relative to the preservations of wetlands and water resources in Chapter 40B applications

(3) Update on Laurel Farm fields wells

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. Hoek – AYE

Member Dr. Hunnewell – AYE

Chair Ms. Beardsley – AYE

The motion passed, and the agenda was amended.

APPROVED 4-0

2. **Heritage of Sherborn – Status** (see Minutes of 10/4/23, 9/6/23, 8/23/23, 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) – Food Inspector Tom Curran was present and reported that he conducted another follow-up visit earlier this evening to assess the status of the outstanding violations on the October 4th report. He stated that Mr. Ziskin has advised that the hood cleaning company is scheduled to complete that service this evening, and Mr. Curran stated that he has requested photos of the

up-to-date sticker upon the completion of that work. He stated that he copied the building inspector on some work that was done by the owner in the basement where some moisture compromised wallboard and insulation. As of today, Mr. Ziskin has not submitted a building application for that work. There is still some debris in the basement that must be removed. Mr. Ziskin has advised that all work will be completed by tomorrow, but he must also reach out to the Building Inspector. In response to a question from The Chair, the Food Inspector stated that he has indicated on the inspection report that the remaining violation, while not “critical”, should be corrected immediately, noting that they should have already been corrected by now.

Noting the extraordinary amount of time the Food Inspector has spent on repeat violations at this one establishment, the Chair suggested the Board look at whether to institute a fine or charge additional inspection fees to recoup the costs to the Board and town for this ongoing oversight. Mr. Curran agreed that this was something the Board should at least consider. Dr. Bevers, noting that the Board does have a reinspection fee structure already in place, asked if the Food Inspector could easily access the number of times he has visited this establishment in the past year. Mr. Curran responded that he would review his reports and get that information to the Board. Dr. Bevers noted that this is becoming pretty burdensome. He stated that a compilation of the food inspector’s visits would be useful in helping the Board’s review of what they can do in terms of levying additional fees based on the number of visits.

Ms. Beardsley stated that she looks forward to hearing comments from the Building Inspector about the work and materials being used by Mr. Ziskin as far as if they are appropriate for a food establishment and for a basement and a damp environment. The Agent reported that the Building Inspector had asked if any work was being done at the Heritage based on the fact that he had no permits, and he was concerned when advised that work was being done. The Agent also clarified for the Board that the Food Establishment Fee Schedule lists a \$75.00 “reinspection fee”.

Dr. Bevers requested that this be added to the November 1st agenda, hoping that by that date *all* violations will be corrected. At that time the Board can discuss levying a reinspection fee.

3. **7 Course Brook Road, Varlei Souza – Building Application #23-45 – room count** (see Minutes of 7/20/22, 12/15/21, and 7/7/21) – The Agent informed the Board that the original plan had been to renovate the existing house, but the owner has advised that would be too costly, and he is planning to demolish the existing house and build an entirely new house on the same foundation. An innovative/alternative (Perc-Rite) replacement 4-bedroom septic system was installed within the past 3-years, but the Agent wanted the Board to review the total room count. The plans were reviewed.

- Basement – 2 finished rooms plus a full bath (2 rooms)
- 1st Floor – master bedroom, kitchen, eating area, family room, living room (4 or 5 rooms)
- 2nd Floor – second master bedroom, 2 other bedrooms (3 rooms)
- Total = 10 rooms

Discussion followed regarding the “eating area” on the 1st floor. Ms. Beardsley noted that they have specified that area as a separate area and felt it should be counted. It was noted that the “study” in the basement has a door leading directly to a full bath, so it would be considered another bedroom. The Chair noted that the basement is a walk-out, with just a few steps up to grade – an open area. She stated that she counts 10 rooms and stated she is *not* inclined to allow a deed recording for the basement since it would be consistent with determinations about other walk-out basement rooms.

Following further discussion, it was noted that the “study” could be removed and the full bath changed to a ½-bath in the basement. With those changes, the house would be compliant with the 4-bedroom septic system. The Agent was instructed to so notify the applicant.

4. **A 2023 Disposal Works Installer Permit Application for Despres Landscape & Excavation of Westminster (#123-28)** was reviewed. While this installer held a 2022 permit, he did not do any work that

year. A motion was made to approve the issuance of this permit as requested, conditional to a pre-construction conference with the Health Agent prior to any work commencing, and it was seconded. By a roll call vote:

Vice Chair Dr. Bevers – AYE

Member Ms. Hoek – AYE

Member Dr. Hunnewell – AYE

Chair Ms. Beardsley – AYE

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

5. **10/4/2023 Minutes** – It was noted that minor edits had been provided. 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. Hoek – AYE

Member Dr. Hunnewell – AYE

Chair Ms. Beardsley – AYE

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

6. **Laurel Farm Fields – Irrigation Wells** (see Minutes of 8/23/23) – The Agent reported that the drilling of the approved irrigation wells at Laurel Fields is scheduled to begin on Monday, October 23rd. Dr. Bevers stated that they should come back and talk with the Board about the pump testing in a few weeks.

7. **11/2/2023 Agenda items** (see also #13 of these Minutes) to date were noted:

- 3 variance hearings are scheduled
- Heritage – status
- Draft regulatory language from Dr. Hunnewell (should be submitted to the Administrator in advance for distribution to the members)

8. **59 Spywood Road, Helen Wang – VARIANCE HEARING – Septic Replacement #23-49** – The Administrator stated that the certified mail return receipts (green cards) and/or usps.com printouts, and a copy of the abutter notification letter, had been received, and all was in order. The Hearing was opened.

Daniel McIntyre, P.E. was present representing the owner. No abutters were present. Mr. McIntyre stated that the owner is selling her home and the current system failed a Title 5 inspection. Site constraints, including high groundwater, wetlands, and ledge were noted. A 4-bedroom Elgin Geotextile Sand Filter System (innovative/alternative technology) in trench configuration is proposed. No increase in design flow is proposed as the existing system is also a 4-bedroom system. The requested variances were reviewed:
1. Section 8.0(1) – to allow the proposed soil absorption system to be installed 2-feet above seasonal high groundwater rather than the required 5-feet, with the use of innovative/alternative technology. 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. Hoek – AYE

Member Dr. Hunnewell – AYE

Chair Ms. Beardsley – AYE

The motion passed and the variance was approved.

APPROVED 4-0

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

Member Dr. Hunnewell – AYE

Chair Ms. Beardsley – AYE

The motion passed and the variance was approved.

APPROVED 4-0

3. Title 5 local upgrade, 310 CMR 15.405(1)(j) - to allow a reduction of the required 12-inch separation between the inlet and outlet tees to high groundwater, provided all boots and pipe joints are sealed with hydraulic cement or installed with watertight sleeves, and the tank is proven watertight. A motion was made to approve this local upgrade as requested, and it was seconded. By a roll call vote:

Vice Chair Dr. Bevers – AYE

Member Ms. Hoek – AYE

Member Dr. Hunnewell – AYE

Chair Ms. Beardsley – AYE

The motion passed and the local upgrade was approved.

APPROVED 4-0

The Hearing was closed.

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

Vice Chair Dr. Bevers – AYE

Member Ms. Hoek – AYE

Member Dr. Hunnewell – AYE

Chair Ms. Beardsley – AYE

The motion passed and the plan was approved with conditions.

APPROVED 4-0 with conditions

9. **39 Wildwood Drive, Eduardo Rosa – Review of bedrock disruption and well water testing process issues** (see Minutes of 8/23/23-#11 and #12, 7/19/23-#12 and #13, 7/12/23, 6/21/23-#8, and 6/7/23) – Dr. Bevers noted that Mr. Rosa and his attorney were present, as were many abutters and other interested parties.

(A) **Bedrock Disruption** - Dr. Bevers noted that the Board has received a number of questions from abutters to *39 Wildwood Drive* regarding the Board’s role in the bedrock disruption process as well as well water testing. He reviewed that the Board had received an application for a bedrock disruption permit at this location. During the initial review, it was determined that all of the requirements had been met, so a permit was granted. There was discussion about best practices, and he noted that the Board can recommend those, but the regulations do not require anything beyond abutter notification. If blasting is proposed, additional information on the blasting agents proposed is required, but that did not apply here. He noted that the abutter notification requirement allows the abutters to conduct baseline well water testing. An Appeal was filed, but the Board denied the Appeal as they felt all of the requirements had been met. A number of abutters went to court, and it is currently in process. Dr. Bevers stated that he felt the Board had followed the extent of the regulations, and he asked for comments from the Board.

Ms. Beardsley had no comments at this time.

Dr. Hunnewell commented that in the last several years the Board has had several instances of well contamination from bedrock disruption. She stated that the Board now has evidence of real contamination in this case (including a more than 14-fold increase in manganese in one month). She felt that the Board has the ability to halt further bedrock disruption at this site. Dr. Bevers responded that there are different views on our jurisdiction. He agreed that there may be a concern, but ultimately, the Board doesn’t have a mechanism to address it. The only way it can be addressed is through the courts, and that is ongoing. Ms. Beardsley stated that she only wants to discuss the “process” side rather than the specific data, but in terms of how this kind of evaluation is handled, she stated that she doesn’t believe the data has provided enough information to make a determination that these are linked, but she did agree that it is something to keep an

eye on and agreed it is concerning. However, no analysis has been provided that would satisfy moving on to another level. She again noted that it is out of the Board's jurisdiction and is something to be dealt with in civil courts.

Dr. Hunnewell stated that the DEP stopped the construction of the library when the Town Offices drinking water was contaminated, and that situation was corrected. She stated that in this case, there is potential for contamination of a lot of wells. Dr. Hunnewell also stated that they did get scientists who presented opinions. In addition, she stated that the Board was given the opportunity to contribute comments about a couple of 40B projects. Overall, the scientists warned the town of a potential to release toxic class 1 (such as lead) and class 2 (such as manganese) contaminants. Dr. Hunnewell stated that she didn't think the Board should be waiting until it's too late, and she recommended that the Board write a letter to the contractor and ask him to remove that material before he continues with his activities, and protect the pulverized material from rainwater by covering it with tarps.

Ms. Hoek asked about the recourses the Board has at this point, understanding that it is in the court. Dr. Bevers responded that we can ask the owner to follow best practices, but noted that the owner is not currently in violation of any of our regulations, and we can't do anything further. Ms. Beardsley reported that she spoke with MassDEP personnel, including counsel there, and their opinions were unanimous that the Board does not have jurisdiction since we don't have a regulation. It is also not in DEP's jurisdiction because the contaminant is not a listed hazardous material under the MCP, nor does it have reportable quantities under MCP or Federal regulations. Additionally, there are no other examples of regulations that DEP is aware of other than for blasting and blasting agents, although those are usually managed by the Fire Department. Ms. Beardsley stated that this becomes a civil matter.

Dr. Hunnewell asked for permission to talk with Town Counsel, stating that she feels the Board could quickly draft a regulation. She stated that the Board needs to be stronger because we are all potentially at risk. Dr. Bevers stated that the mechanism we have is to write a regulation, but that has not been done. Ms. Beardsley reminded Dr. Hunnewell that last year she had volunteered to write up a section about bedrock disruption for the regulation review just completed, but that she had never provided anything. Dr. Hunnewell asked again to speak with Town Counsel and Ms. Beardsley requested that Dr. Hunnewell write out her questions or issues she wants to discuss with Town Counsel, and it will be forwarded to the Town Administrator or Select Board for approval. Dr. Hunnewell asked why, if the Board has concerns about objective data that we see or hear, why can't we write a letter to the developer and ask him to cease and desist? Dr. Bevers responded that we can ask that he follow best practices, but we don't have all power to stop anything. Ms. Beardsley stated that the data we have in hand is not sufficient to come to the conclusion that Dr. Hunnewell has reached.

Dr. Hunnewell made a motion that the Board send a letter to the developer and ask him to stop the ledge disruption activities, but Dr. Bevers stated that the Board cannot ask him to stop. Ms. Hoek asked if the Board could write a letter asking him to follow best practices, saying she would feel better if he removed all the broken ledge and covered any that remained. Dr. Hunnewell stated that during COVID-19, the Board asked a lot of people to do lots of unprecedented things, and she noted that this is an unprecedented situation in our town. She stated that the Board of Health is the only body that has an ability to do anything. Dr. Bevers responded that during COVID-19, there was an expanded Statewide State of Emergency. The Board made recommendations to others who could then implement those recommendations. Dr. Bevers stated that we can now inform the owner and recommend that he follow best practices.

A motion was made to authorize the Chair and Vice-Chair to draft a letter to the owner of 39 Wildwood Drive and ask him to remove the disrupted ledge frequently, and while material is left onsite awaiting removal, that it be covered. He will be reminded of the Board's previous recommendations (in previous Minutes). The motion was seconded. By a roll call vote:
Vice Chair Dr. Bevers – AYE

Member Ms. Hoek – AYE

Member Dr. Hunnewell – AYE

Chair Ms. Beardsley – AYE

The motion passed and a letter shall be drafted and sent. **AGREED 4-0**

(B) Well Water Testing – Dr. Bevers stated that the Board would now talk about private wells and well water testing. Ms. Beardsley provided a brief history about how the Board of Health has authority over private wells, noting that MassDEP determined a certain magnitude size well that they would regulate, and they are the Public Water Supply wells. The authority and responsibility to regulate wells (and establish regulations) below that magnitude was designated to local boards of health. She noted that the Board has technical criteria regarding distances to septic systems, roadways, etc., as well as requirements for water quality, and what methods can be used for testing quality. Ms. Beardsley stated that the quality test results the Board reviews is only required when a well is first drilled, and she noted that it is related to Housing regulations that require potable water before any house can be inhabited. She stated that after this initial testing and approval by the Board, the responsibility for that well belongs to the homeowner.

Ms. Beardsley stated that she happened to come across good information for private well owners on the Minnesota Department of Public Health website, noting that Minnesota has a lot of private wells scattered throughout the state and they have good information which is geared toward homeowners and what they need to do. She read a brief statement from that website: “Unlike people who get their drinking water from a public water system, private well users are responsible for regularly testing their well water and treating it when necessary. They are responsible for making sure their water is safe for everyone in the household.” Ms. Beardsley noted that homeowners don’t always have to do every test that is on the Board’s listing of requirements for a new well’s testing, but they can choose what testing they want to pursue based on their situation/environment. There are no restrictions on how often they have their well water quality tested, and the testing laboratory can provide advice on what to test for depending on your own situation.

In terms of what testing laboratories to use, the Chair noted that the Board is aware of information going around stating that it doesn’t really matter what laboratory you use, and she noted that is personal choice. However, she stated that MassDEP and the Board of Health absolutely recommend that a *certified* laboratory be used because the integrity of their practices is reviewed. The information you will get from a certified lab is defensible, should that ever be necessary in a dispute.

Ms. Beardsley stated that de-certification of a testing laboratory is a very serious issue, and MassDEP does not take it lightly. Although the Board is aware of information stating that ETR Laboratories had merely been late with some paperwork, on the MassDEP website they review the violations they found in their evaluation of ETR, including performing careless and inaccurate reporting of analytical measurements, engaging in unfair deceptive or fraudulent practices, and making false, inaccurate, incomplete, or misleading statements on laboratory reports in a manner that threatened public health. With that, Ms. Beardsley stated that it is up to homeowners to use whatever laboratory they want to use, but she advised that residents visit the Board of Health or MassDEP website and find a certified laboratory. She stated that residents can look at the Board of Health regulations or ask a laboratory for help with what parameters should be tested. She also suggested that residents have the laboratory take the water sample for them, stating that there are specific protocols around the types of vials and sampling. Chains of Custody are important if you intend to share the analysis report with others but if it is for your own purposes, it doesn’t necessarily matter.

Dr. Bevers summarized, that the only time the Board of Health requires well water testing is with the installation of a new (or replacement) well, or an existing well being drilled deeper (as a new water source will be used). He noted that additional water testing is required for food establishments in town for their annual food permits. Dr. Bevers stated that residents can use whatever laboratory they want, but

noted the Board advised that a *certified* laboratory be used for their own protection. He stated that we do not require that someone else take the sample for you, but that could be another measure that would be helpful to ensure nothing is missed. Dr. Bevers noted that the Board does not observe the sampling – even for new wells. He stated he wanted to clarify the process on well water testing to ensure everyone is getting the results that are most helpful to them.

Ms. Beardsley noted that if there is a treatment system present in the home, there is a difference between testing the raw water (water coming out of the ground before it goes through the treatment system), and finished water (post-treatment). She stated that it is important to know the quality of your finished water and how the treatment/filter system is functioning. She noted that finished water is what most people are interested in, but the quality of the raw water is extremely important in other cases.

There being no further comments from Board members, the Board took public comment:

Public Comment:

Jennifer Lymneous – The issue is not contamination of her personal well – it is contamination of the groundwater. Confused why this is being framed as a well issue. What is the Board of Health’s responsibility regarding groundwater contamination? Dr. Bevers responded that it is framed around wells because we protect the groundwater through our septic system and well regulations. A lot of the rules are intended to avoid contamination of groundwater from septage. Ms. Lymneous asked what the Board of Health is able to do when there is a nuisance or new issue related to neurotoxins in groundwater, not specific to any one person or well – such as when the groundwater has lead in it? Ms. Beardsley responded that is not what the Board of Health does – we try to avoid groundwater pollution by regulating septic systems. She stated that ordinarily, contamination is overseen by the MassDEP. She noted, however, that manganese is not one of the contaminants of concern under the Massachusetts Contingency Plan (MCP), which looks at activities or events that have impacted soil, groundwater, or surface waters. Ms. Beardsley stated there is another approach to regulations around reportable quantities, such as a radioactive material where there is a threshold value that says if you spill more than “X” amount you need to do studies and you need to remediate. She noted, however, that manganese doesn’t have any of those thresholds – it only has drivers in drinking water standards, and that is not in the Board of Health arena. Ms. Lymneous then asked what the Board of Health is doing specific to lead. Ms. Beardsley responded, again, that the Board regulates from the point when a well is initially drilled and tested, preceding use, to ensure they meet drinking water standards. The Board does not have the authority to regulate groundwater in the abstract – it is point of use. Ms. Lymneous stated that as new test results come in from water testing done in the neighborhood, if multiple residences find lead in their water at their point of use when there has never been a detection in the past, what is the Board’s position and how would you use that data? Dr. Hunnewell responded that lead is a Class 1 contaminant and is regulated at the Federal level.

Dr. Hunnewell commented that the EPA and other entities could intervene, even on private water supplies, because it has to meet drinking water standards. She stated that the problem is manganese, a Class 2 contaminant, and in medicine it is known to have neurotoxic levels, and it is not true that in medicine don’t do anything – we care. She stated that the Board of Health doesn’t all agree and that there are different levels of interest in pursuing more protective regulations on the Board. She stated that this is in our jurisdiction because it is not in the jurisdiction of MassDEP. Dr. Hunnewell stated that if this were happening in a town like Natick, Framingham, or Wellesley (not 100% private wells), MassDEP would probably comment today. She then stated that because Sherborn is all private wells and because the groundwater is fragile and potentially being affected by depletion of the water supplies with global warming, it is a concern and the Board does have the responsibility and obligation to take more precautions and be proactive.

Dr. Bevers, responding to Ms. Lymneous’ last question, stated that the Board can take the data and use it to inform the Board’s drafting of future regulations, but right now it becomes a civil matter. He

stated that the Board can advise on what the safe level of lead is, and whether or not you should drink your water or recommend filtration or treatment, but the Board does not have the ability to move beyond that.

Ms. Lymneous stated that she heard the Board saying that if Sherborn was like other towns with less private wells, it is possible that MassDEP would be addressing these concerns and issues, but the Sherborn Board of Health does not do that. As a result of that, she understands that the Board is saying that someone can come in and cause groundwater contamination that is not within the purview of a well owner's responsibility or ability to address or prevent, but the Board of Health is not able to do anything about that. Dr. Bevers clarified that MassDEP regulates public water supplies – it doesn't have to do about them being active in a town. MassDEP has jurisdiction over that and would work with the towns with public water supplies if something appeared in their water. Ms. Beardsley stated that the way DEP reacts is that they have regulations for public water supplies and require period testing of PWS. If lead, for example, showed up in a water supply above the acceptable level, it triggers a series of actions and it requires the PWS to come into compliance. It does not say that DEP will go out and investigate or try to find who is putting the lead there – it says the PWS has to install treatment or eliminate the source of the lead. Ms. Beardsley noted that is the same as the requirement in the Board of Health regulations when a well is first drilled. The difference is that the responsibility is turned over to the homeowner after the well is approved. The Board can point the homeowner in the right direction (what should you test for). The Board essentially does the same thing that MassDEP does for public water supplies, but not on the same schedule that DEP requires for large water supplies – we are not different in terms of what kind of “investigation” is done.

Ms. Lymneous felt the Board was misunderstanding her question since they continued to talk about testing. She stated that she is asking about remediation and prevention. Both Ms. Beardsley and Dr. Bevers stated that they have not misunderstood the question, saying that Ms. Lymneous seems to think there is something different going on, perhaps as a result of Dr. Hunnewell's comments. However, that is not correct – MassDEP does not do remediation and protection. Ms. Beardsley stated that there is a clean-up branch of MassDEP and a water supply division, and the evidence needed to pursue finding responsible parties and initiating remediation is very different. Ms. Beardsley stated that she has talked with MassDEP and they are not aware of any prevention activities regarding bedrock other than for blasting agents.

Paige Brodie spoke specifically about *39 Wildwood Drive* noting that in previous Minutes, Mr. Rosa agreed to remove the disrupted ledge daily, if possible, but would tarp any remaining material. She stated that she has documented every day that there are significant piles of rock ledge that are exposed and uncovered, and stated that Mr. Rosa has failed to meet his agreement. She stated that the mandate of the Board of Health must be to protect the groundwater and the citizens of Sherborn. She stated that she does not want Mr. Rosa damaging the groundwater, and would love to see the Board of Health not approving this type of permit in the future. Ms. Brodie stated that she felt the mandate of the Board of Health should be to protect the groundwater and the citizens, and was concerned that the residents' only recourse is civil litigation.

George Morgan stated that he had a new well drilled in 2007, and he was told that the water quality must meet the regulations. He stated that the well at *39 Wildwood* is currently being drilled, and he felt that if neighbors are already getting contamination, it is possible that the well at *39 Wildwood* will also be contaminated. He stated that there will be a time when the Board will need to certify this new well, and if the manganese is too high, it seems that the construction should not be allowed to proceed. The Agent responded that the well at *39 Wildwood Drive* has been drilled, and it has been tested for both quantity and quality, and is presently approved with a letter from the owner stating that he is aware of 2 issues. As it relates to the ledge disruption, the Agent reported that the personnel onsite today advised that the ledge disruption is finished and the equipment will be leaving the property tomorrow. Mr. Morgan asked if the Board could withhold approval of the well at *39 Wildwood Drive* until the contaminants have been removed from the surface.

Ratna Nararyan first spoke about recent water testing done at *33 Wildwood Drive*, owned by Mark Dershwitz and recently purchased by Carmen and Gary Ng, and she asked why those water test results are not being considered by the Board. She stated that she went to the DEP and they told her to go to her local Board of Health. Ms. Nararyan stated that she felt the information presented to the Board in their Appeal had plenty of information that could be used by the Board – specifically calling out the study of Holliston where when manganese was found, they installed filtration systems. She also noted issues with the library water in 2014 and “Button Ball Farms” where odd-numbered houses on Wildwood had their water turn black for a few months, as well as the current issues at this property. A second question from Ms. Nararyan was about the Board of Health regulations, asking why the Board is not working on them with all of the information the resident group has provided. The third question was about the mitigation efforts that the builder of *39 Wildwood Drive* was going to do. She noted that one of the questions to the builder was to allow the Health Agent onto the property, and she was concerned that the Board of Health is not following through.

Dr. Bevers responded to each question posed:

- (1) Regarding the water test results, the bottom line is that there is no action for the Board of Health to take on the test results, and he noted that it was not that they weren't considered. He stated that the Board would advise that they do not rely on results from a de-certified laboratory.
- (2) Regarding what the Board is going to do with the regulations, Dr. Bevers stated that many on the Board are open to revising this regulation, and noted that they had just finished a round of regulatory review. The regulatory review is continuous, and the Board would be happy to bring forth any additional evidence to strengthen this regulation, but that will not affect the current situation.
- (3) In response to the last question, Dr. Bevers stated that the Agent has been out to the site on multiple occasions and has been in communication with the owner.

Ms. Beardsley commented that if the Board was DEP regulating this well, the action that would be taken would be that we would require treatment be installed. She stated that DEP would not look to the bedrock, noting that nobody is looking at regulating bedrock in the way that this Board of Health is attempting to get at. She stated that the local regulations would not have the section about bedrock disruption if the Board was not concerned about it. Ms. Beardsley also clarified that DEP did not intervene and stop bedrock disruption at the library due to well contamination. Rather, it was due to other issues with the layout of the water supply system relative to other features in town – a completely different matter.

Dr. Hunnewell referenced Massachusetts General Laws 105 CMR 500.206(4), Order to Cease and Desist, noting that such an Order can be issued when “A licensee or permit holder is operating in a manner that may pose an imminent danger to the public health”, and she stated that the Board does have the jurisdiction to write a cease-and-desist order. [Note: 105 CMR 500 is for “Good Manufacturing Practices for Food”.] Dr. Hunnewell stated she does not think it is true that the Board can't do anything. Dr. Hunnewell stated that she doesn't think it is true that the Board can't do anything – we need to have a desire to do something. She felt it is important enough that the Board can halt the construction activities if the Board agrees that it is worth investigating whether this is dangerous for more than just the immediate abutters. She stated that if there is lead being released into the aquifer, it is very serious, and the Board should get advice from MassDEP. She felt the Board has a responsibility to do something.

Ms. Beardsley stated that in reference to the evidence we have, we have very limited data, and she noted that during the permit discussion and Appeal Hearing, a prior owner in the area stated that he had manganese detected in his well water for years.

Dr. Bevers noted that Ms. Lymneous mentioned that she has years' worth of water testing data, and he assumed that at least some of the residents likely had baseline water testing done after receiving the abutter notification of bedrock disruption. In addition, some residents have stated that they are having repeat water testing done. He stated that if those results are submitted to the Board of Health office, they

will provide more data to the Board. Although it will still be outside the Board's jurisdiction, it will perhaps help in some other arena.

Dr. Hunnewell stated that the Board should take precautions and potentially issue a cease-and-desist order because if it is true that there is lead, manganese, and arsenic in this ledge, we should not allow it to continually be pulverized.

The Agent commented on the research he did on the past water analysis reports for *33 Wildwood Drive*, and he noted that we have one report from 1995 when the existing well was deepened. Another report was from ETR Laboratories, which was de-certified, so that report cannot be considered valid. The last report we have was from 2023 and was done by RCAP, a group that conducted free private well testing in town. The RCAP report does not indicate if the water was sampled from prior to the filter or post filter. He stated that is all the analysis reports we have for this property. He requested that if there are other reports, that they be provided to the Board of Health for our records.

Dr. Bevers reviewed that the Board has noted several times that there is no action the Board can take on these reports right now. Noting that Dr. Hunnewell would like to issue a cease-and-desist order, but Dr. Bevers believes that the Board cannot because they validly issued a permit.

Gary Ng stated that he submitted those water reports last week, and he felt that safety measures are crucial to protecting his family. He asked about the role of the Board of Health and who is managing the situation. He noted that the Agent stated he has visited the site multiple times, and he asked if the Agent provided any recommendations to the builder to remove the piles – did the Agent taken any action? Mr. Ng stated that the same pile of rock is still there after a whole week, and he said it is shocking to hear that the Board of Health cannot act right away and is worried only about the wording of a letter. Mr. Ng stated that he believes Dr. Hunnewell is the only member that is considering public health right now. Dr. Bevers responded that the Agent has been out to the site and has communicated onsite about the Board's recommendations, but he noted that they are only recommendations. If they don't follow those recommendations, there is nothing the Board of Health can do. Dr. Bevers reminded everyone that the neighbors were notified by the ledge disruption would be happening – as required by the regulations. Dr. Bevers also assured everyone present that all of the members of the Board of Health care about public health. Dr. Bevers stated that the Board's discussion about the wording of the letter to the owner is important because the Board wants to make sure they are doing this correctly, and the discussion is about following the open meeting law and ensuring the Board does not have discussions outside of an open meeting among a majority of the Board.

Ratna Nararyan made additional comments. First, she stated that she has heard the drilling has stopped, so she stated that the emphasis now should be on removal of the exposed rock all around. Secondly, Ms. Nararyan stated that, with regard to the Agent's question about the 2022 testing at *33 Wildwood Drive*, she stated that it is her belief, although this is not her property, that there was no filtration system there. She stated that she is sure Mr. Ng can provide all the information in a follow-up email.

Discussion ended. Dr. Bevers stated that while it ranged a bit beyond "process", the Board hopefully clarified what the Board's process is and what the process is for regulations going forward.

10. **Proposed future regulations change – water testing of rental units** (see Minutes of 10/4/23-#16) – Dr. Bevers noted that Dr. Hunnewell had requested this discussion, regarding well water testing be required for rental units, and he asked if she had drafted anything. Dr. Hunnewell responded that she proposed a one-sentence amendment to the existing regulation requiring homeowners who have a rental unit attached to their well be required to submit annual testing for the renters as well as to the Board to be used at the change of rental. Dr. Bevers requested that Dr. Hunnewell draft the regulation, and provide it to the BOH Administrator, who will then add it to an agenda for the Board to discuss.

11. **40B Regulation – Proposed Change** – Ms. Beardsley reviewed House Bill H.2104 which is currently being considered at the state level. Online testimony will be accepted until Tuesday, October 24th at 5:00 PM. She noted that this bill reverts more control to local Conservation Commissions in the approval of a 40B project. The Chair stated that she sees this as important because while normally we are dealing with groundwater, we do acknowledge that wetlands and surface waters have bearing on groundwater quality as well. She stated that she would be inclined to support this bill, and Dr. Bevers agreed. A motion was made to authorize the Chair and Vice-Chair to submit online testimony indicating the Sherborn Board of Health is supportive of H.2104 and the proposed amendment prior to October 20th, and it was seconded. By a roll call vote:

Vice Chair Dr. Bevers – AYE

Member Ms. Hoek – AYE

Member Dr. Hunnewell – AYE

Chair Ms. Beardsley – AYE

The motion passed and the Board was in agreement.

AGREED 4-0

12. **Manganese Fact Sheet** – Ms. Beardsley presented a Manganese Fact Sheet that is posted on the MassDEP website, noting that it is a secondary contaminant and has information on health effects, how to consider infants, and answers questions about cooking, brushing teeth, bathing and washing. She recommended that people review it.

13. **11/1/2023 Agenda Items** (see also #7 of these Minutes) were again reviewed. Dr. Bevers noted that there were 3 variance hearings scheduled and a recurrent discussion of the Heritage. He asked Dr. Hunnewell if she would have draft language for her proposed regulatory amendment available by then, and Dr. Hunnewell agreed, and confirmed that she would.

14. **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. Hoek – AYE

Member Dr. Hunnewell – AYE

Chair Ms. Beardsley – AYE

This virtual meeting adjourned at 9:23 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 10/18/2023 MEETING
(All items stored in the Board of Health files unless otherwise noted)

1. **59 Spywood Drive –**
 - Septic Replacement plan #23-49, drawn by Daniel McIntyre, P.E., dated 9/7/23
 - Application for Title 5 Local Upgrade, Form 9A
 - Variance request letter from Daniel McIntyre, P.E., dated 9/11/23
 - Certified list of abutters from the Assessor's office, dated 9/7/23
 - Copy of abutter notification letter from Daniel McIntyre, P.E., dated 9/12/23
 - Certified mail return receipts (green cards) and/or usps.com printouts and/or unopened returned envelope from the abutter notification letters
 - Title 5 Local Upgrade Approval, Form 9B
2. **Minutes –**
 - BOH meeting Minutes 10/4/2023
3. **7 Course Brook Road –**
 - New Building Application #23-45, including floor plans
4. **2023 Installer Permit Renewal –**
 - Despres Landscape & Excavation of Westminster, MA - #I23-28
5. **39 Wildwood Drive –**
 - 10/12/2023 email and letter from Carmen & Gary Ng titled "Contamination of Drinking Water at 33 Wildwood Drive, with attached photographs and water testing results (1) 6/23/23 report from ETR Laboratories, (2) 10/11/23 report from Nashoba Analytical (via SafeWell)
 - 10/13/23 email from Carmen Ng/Gary Ng titled "RE: October 19, 2023 meeting date", with 8/10/22 water analysis report for 33 Wildwood Drive by Alpha Analytical for RCAP Solutions, 7/25/2022 Granite State Analytical Services report for 33 Wildwood Drive, and an 8/15/22 report from the MassDEP Be Well Informed Guide, created 8/15/22
 - 10/16/23 email from Jane Rosengard titled "39 Wildwood Dr / contamination and non compliance with BOH directives"
 - 10/17/23 from the Ng Family titled "33 wildwood dr resident water contamination"
 - 10/12/23 email from Town Counsel – Confidential Attorney-Client Communication (not a public record)
 - MassDEP Press Release from 11/29/2021 "MassDEP Decertifies Laboratory in Leominster for Failing to Properly Analyze Drinking Water Samples and Report Results"
6. **MassDEP Fact Sheet –**
 - Manganese in Drinking Water: Questions and Answers for Consumers (<https://www.mass.gov/topics/drinking-water>)
7. **Heritage of Sherborn –**
 - 10/18/2023 Food Establishment inspection report, with photographs