

September 10, 2022

Omar Johnson, Agent
Tim Barnett, Chair
Erik Lowe, Board Member
Jessica Miller, Board Member
West Tisbury Board of Health
West Tisbury Town Hall
West Tisbury, MA 02575

Sent via email to: boh@westtisbury-ma.gov

RE: Proposed "Enhanced" Septic System for
213 Vineyard Meadow Farms Road
West Tisbury, MA

Dear Mr. Johnson and the Members of the Board of Health,

Thank you again for taking the time to consider my health-related concerns around the proposed 10 bedroom project at 213 Vineyard Meadow Farms Road. I did not raise the bedroom matter at the September 8, 2022 Board of Health meeting since I've raised it several times in separate letters but for your convince I've attached an addendum to this letter that specifically addresses the bedroom count matter. I would greatly appreciate a response to this matter so we can share the correct bedroom count with all the appropriate Town Boards and the builder.

I want to raise several concerns around Reid Silva's comments at the September 8, 2022 Board of Health's meeting. I documented these comments during the meeting, and I'll outline these concerns over five (5) critical topics:

1. **Conflict of Interest and Limitations Regarding Mr. Silva:** Mr. Silva's firm provides engineering and survey services to Squash Meadow Construction Inc. and the property owners of 213 Vineyard Meadow Farms Road. As such it is important to recognize that he has a conflict of interest in discussing this topic before the board in that his firm has a financial interest in the approval of this project. When it comes to discussing matters that his firm has actually worked on, such as the septic plan and the site survey of this project, the potential conflict becomes an actual one. Any comments that Mr. Silva makes can be construed to directly benefit his firm, his reputation, and his clients. When it comes to discussing matters of engineering science, such as septic flow, infiltration rates and waste distribution systems, the conflict becomes indirect but still a matter of concern. When it comes to discussing the role of the Board of Health, matters of Board policy, adequacy of current regulations and/or the need for regulatory clarification, the conflict of interest becomes less direct but remains a matter for concern by reason of his firm's financial interest in the outcome.

Since I've not been given access to the engineering work of Mr. Silva's firm, I can't directly question the work performed nor did I feel it prudent to raise the matter at the meeting. Since I've not seen any evidence that the Town has completed an independent review of the engineering work, I kindly request access to all of the permit documentation, engineering work and percolation results so I can have an independent engineer review the documentation. As I raised in my previous letter, I am concerned that the proposed leaching field is more than 10 feet away from the percolation test sites which I believe is not in accordance with Title V and the Board of Health's regulations. There was, however, extensive commentary by Mr. Silva about the limited role of the Board of Health, the limited abilities of the Board to address particular issues of concern, the potential for litigation if the Board were to decide in a certain way, and whether bedroom density should even be a matter of concern for the Board. Mr. Silva's comments in these areas are not entitled to any enhanced consideration by the Board simply by merit of his engineering and work experience. His views and opinions on these topics are not the equivalent of the considered legal opinions of the Town counsel. Rather, they should be viewed as those of an island resident with a financial interest in the eventual outcome.

2. **Flow versus Capacity:** It is very important to distinguish Flow from Capacity. Flow is simply the actual amount of matter (i.e. wastewater) flowing by a particular point over some specified time. Capacity represents the ability of facilities to move or process something (in this case wastewater). Mr. Silva kept making comments suggesting that the Board of Health should ignore the Board of Health's regulations and Town's Bylaws simply because the expected flow of wastewater is significantly less than the capacity requirements which means that there are no health concerns which means the Board of Health should not be concerned since it is not in their mandate (to be covered later). Section 13.2 (Residential Flow Limit) of the West Tisbury Board of Health Regulation states that "all residential lots shall be permitted 110 gallons of wastewater flow per day per 15,000 square feet of residential land". This suggests that the Town and the Board of Health has adopted a standard that cannot be overturned just because Mr. Silva thinks the septic system design (capacity) can easily handle expected flow. As stated in a previous letter, I would strongly recommend that the Board institute an immediate moratorium on the approval of any "enhanced" septic system that results in a bedroom count that exceeds the current density limit of the town or the applicable Residential Flow Limit. Such an action by the Board would allow single family housing projects that currently comply with the town's density levels or Residential Flow Limit to proceed even where such projects include or involve an "enhanced" septic system. Only those projects that utilize such "enhanced" systems to avoid or evade the current density levels or Residential Flow Limits would be halted by such a moratorium. Consistent with the overall views and desires of the town to maintain and support the rustic and agricultural nature of this town, we would hope that the Board of Health would

develop regulations (with input from the public) during this moratorium that would restrict or limit instances where such systems provide a bedroom count that exceeds density limits or the Residential Flow Limit. Such future regulations would provide exemptions which would be limited to building projects that serve a larger community interest within West Tisbury such as elderly housing, affordable housing, or workforce housing projects.


3. **Purpose of the West Tisbury Board of Health:** Per Section 1 of the West Tisbury Board of Health Regulation, the Board of Health's primary function is to ensure that the purpose of these regulations is maintained and adhered to. The "purpose of the regulation is to protect the public health and general welfare, to maintain the quality of the groundwater and surface waters, to prevent pollution of potable water supplies, and to maintain the viability of fishing and shell fishing areas". Mr. Silva kept conflating this matter as a "Big House" matter and not as a health issue. He even went to say that not approving a Septic System design that circumvents existing town regulation/bylaws is acceptable since he perceives the matter as not a health issue. After listening to Mr. Silva's own words, he actually stated that housing density does create a health issue to neighbors, the groundwater, and coastal ponds, and accordingly, this matter is very much about the health and general welfare of our community.
4. **MA Title 5 and Local Regulations/Laws:** Massachusetts regulates sewage treatment and disposal through regulations enacted by the Massachusetts Department of Environmental Protection (MassDEP) and administered and enforced through local city and town Boards of Health. The State Environmental Code (310 CMR 15.000), also known as Title 5, is the standard requirement for the siting, construction, inspection, upgrade and expansion of on-site sewage treatment and disposal systems. Title 5 requires systems to be designed forecasting 110 gallons per day (gpd) per bedroom (As defined by the Town of West Tisbury since there is no bedroom definition within Title 5). MassDEP convened a working group of regulators and industry experts in 2012 to discuss the issue of the appropriateness of Title 5 design flows. The group researched data from a variety of existing users as well as available data and requirements from other states. With regard to residential use, the group concluded that 110 gallons per bedroom appears appropriate for a single-family home given the lack of control over the number of persons residing in them. The Massachusetts Home Rule Amendment (Article 89) and a state statute known as the Home Rule Procedures Act.2 (MGL Ch. 43B) were adopted in 1966. The purpose of the Home Rule Amendment is, by its own terms, to "grant and confirm to the people of every city and town the right of self-governance in local matters." Municipalities are allowed to adopt regulations under Home Rule that are more stringent than state regulations. In the case of on-site sewage disposal, many communities have adopted local septic regulations. The Comprehensive Permit Law (MGL CH 40B) does allow developments including affordable housing to

seek waivers from these local rules. I believe the Board of Health should deny this application and work with the public and other subject matter experts to refine town regulation. Mr. Silva was inconsistent on this matter and I believe the Board of Health and the Town should seek appropriate support from town counsel.

5. **Expect Title 5 changes in early 2023:** It is very clear that the State is increasing its standards on septic system as the health and general welfare of the general public is demanding these changes. I believe that Mr. Lowe, a Board of Health member, made reference to this point and noted that the State is getting stricter on Title 5 regulations. The recommended moratorium makes even more sense since it would afford the Town the opportunity to incorporate these new Title 5 changes.

Should the Board not choose to enact a moratorium, we would respectfully request that they not approve the proposed "enhanced" septic system at 213 Vineyard Meadow Farms Road for all the above stated reasons in this letter.

Sincerely,



Erich Mettler and Pamela Boiros

205 Vineyard Meadow Farms Road

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617-529-8900

CC: West Tisbury Planning Board planningboard@westtisbury-ma.gov
West Tisbury Zoning Board of Appeals zba@westtisbury-ma.gov
West Tisbury Board of Selectmen townadmin@westtisbury-ma.gov
West Tisbury Building Inspector inspector@westtisbury-ma.gov
Reid Silva info@VLSE.net

Addendum to this Letter Addressing Project Bedroom Count:

Based on the definition seen in the West Tisbury Bylaws (within the definition section), the current bedroom count for this project should be ten (10) (eight (8) within the main structure and two (2) within the garage accessory building). A Bedroom (with or without detached) is defined as any room, other than a kitchen, bathroom, living room, dining room, or unfinished cellar, that can be **closed off for privacy** and that does not provide access to another room (except a bathroom), including but not limited to a bedroom, study, den, family room, studio or office. The West Tisbury Bylaw makes no reference to a square foot or size requirement, but if you were to apply a 70 square foot limit, all ten (10) rooms noted in the previously issued construction drawings meets the West Tisbury Bedroom definition as well as the 70 square foot limit. I've attached a set of construction drawings highlighting the eight (8) bedrooms in the main structure. In the original construction documents issued to the West Tisbury ZBA (as part of a setback relief application), the construction documents reflected two bedrooms above the garage of an accessory building. The builder of this project is now claiming that those two bedrooms above the garage are gone and the space will now serve as garage storage space. In my opinion, the builder is misleading the Town and the abutters of the project since the most recent site plan, issued to the Planning Board for their September 12, 2022 3,000 square foot Site Plan Review, contains a septic drainage pipe coming from the garage as it previously did when they were seeking a special permit from the West Tisbury ZBA.

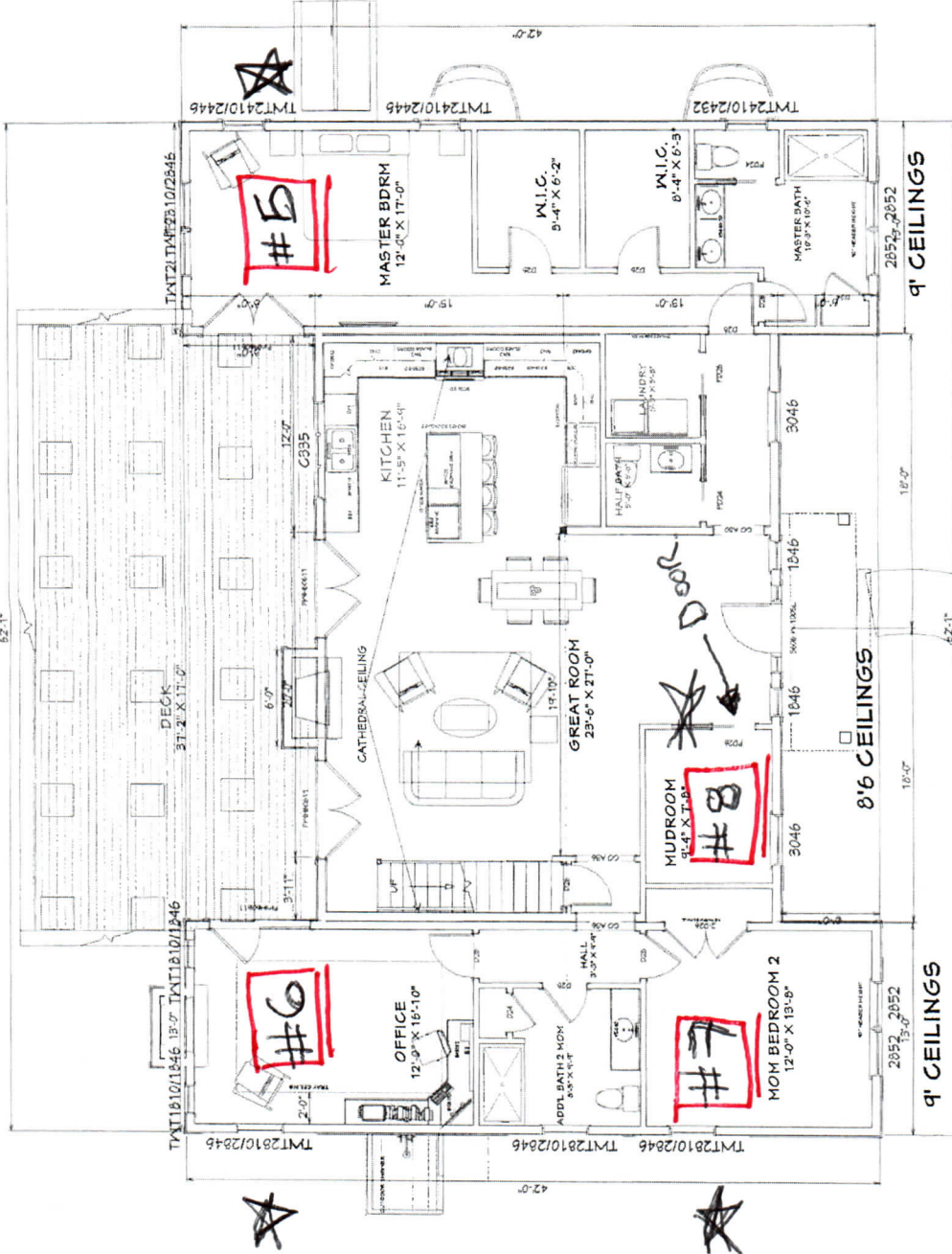
I've asked the Board of Health to provide a response to the Bedroom count matter as it is very important to this discussion. I believe the other town Boards should receive a final Bedroom count from the Board of Health so that various narratives from the builder of this project do not confuse or misrepresent the true bedroom count of this project.

[illegible]

Figure 1 is a plan view of the test structure. It shows a cross-shaped frame. The horizontal beam is labeled "CATNAUK" and has a width of 13'0" x 42". The vertical column is labeled "MOD F" and has a width of 13'0" x 42". The four rectangular end plates are labeled MOD A, MOD B, MOD C, and MOD D. MOD A and MOD B are on the left side, MOD C and MOD D are on the right side. MOD A and MOD C are 15'0" x 36", while MOD B and MOD D are 13'7" x 56". A dimension line on the left indicates a height of 10'0" for the vertical column section.

BUILDER		R3		CONST TYPE	WOOD	DESIGNER	DRAW	DATE	SCALE	PAGE:	<div><div></div><div></div><div></div></div> <div>5</div>	
USE GROUP		R3		WOOD	FRAME (VB)	DESIGNER	DRAW	DATE	SCALE	PAGE:	WESTCHESTER MODULAR HOMES INC. 30 REAGANS MILL RD. WINGDALE, NY 12594 Tel (845)832-9400 Fax (845)832-6698	
SQUASH MEADOW		SITE		ADDRESS		PRODUCTION No		SERIAL No		PE/RA		THIRD PARTY INSPECTION AGENCY
HOME OWNER		CROWLEY		ADDRESS		PRODUCTION No		SERIAL No		PE/RA		THIRD PARTY INSPECTION AGENCY
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CUSTOM 2 STORY
 FIRST FLOOR



SCALE: 3/16" = 1'0"