docketed 10/3/26

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Superior Court - Norfolk
Docket Number

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF THE TRIAL COURT
SUPERIOR COURT DEPARTMENT

NORFOLK, ss. 26cv1234 **No.** _____

86 PLAIN STREET, LLC, **Plaintiff,** **v.** **TOWN OF MEDFIELD BOARD OF HEALTH,** **Defendant.**	**COMPLAINT**

NATURE OF THE ACTION

1. Plaintiff 86 Plain Street, LLC (the "Applicant") brings this action in the nature of certiorari pursuant to G.L. c. 249, § 4, against Defendant Town of Medfield Board of Health (the "Board"), seeking judicial review of the Board's denial of a disposal system construction permit (the "Denial") for the Plaintiff's property located at 86 Plain Street in Medfield (the "Property"). The Board's Denial is attached hereto as Exhibit A.

PARTIES

2. Plaintiff 86 Plain Street, LLC is a Massachusetts Limited Liability Company with an address of 1165 Washington Street, Hanover, Massachusetts 02339, and is aggrieved by the Board's Denial.

3. Defendant Town of Medfield Board of Health is a duly constituted board of the Town of Medfield (the "Town"), with its principal office located at 459 Main Street, Medfield, Massachusetts.

JURISDICTION AND VENUE

4. The Superior Court has jurisdiction under G.L. c. 249, § 4, as this is a case in the nature of certiorari to correct errors in proceedings before a municipal body where such proceedings are not otherwise reviewable by motion or appeal.
5. The Applicant seeks to correct errors made by the Board, which are contrary to applicable state regulations, 310 CMR 15.000 ("Title 5").
6. There is no other appeal or review available to the Applicant to challenge the Board's Denial, which has resulted in substantial injury and manifest injustice to the Applicant.
7. This Court has venue over this matter, as the Property is located within Norfolk County.

STATEMENT OF FACTS

8. The Applicant is the record owner of approximately 14.86 acres of land located at 86 Plain Street in Medfield, Massachusetts, which property is more particularly identified as Medfield Assessor's Map 6, Lot 9 (the "Property").
9. The Medfield Zoning Board of Appeals (the "ZBA") issued the Applicant a comprehensive permit, pursuant to G.L. c. 40B, by a decision dated October 16, 2025, for the construction of twenty-four (24) single-family homes on the Property (the "Project").
10. The comprehensive permit approving the Project was not appealed.
11. The Project will be served by a private septic system.
12. In the comprehensive permit decision, the ZBA granted a waiver from the Medfield Board of Health Regulations, which "prohibits an on-site septic system serving more than

one property or a single dwelling unit," to "allow a common on-site system to service" the Project's twenty-four units, subject to the conditions contained in Section H of the decision."

13. Condition H.2 of the comprehensive permit decision states that the Applicant's shared septic system "is permitted subject to obtaining a Disposal Works Permit pursuant to Title V from the Medfield Board of Health."
14. In February 2026, the Applicant applied for a Disposal Works Permit from the Board to install the septic system for the approved Project (the "Application").
15. Amid conversations with the Board and its Agent, the Applicant re-submitted a revised plan to the Board on or about May 7, 2026.
16. The Board engaged TetraTech, a large and highly respected engineering firm with substantial expertise in this field, as a third-party peer reviewer to advise it in its review of the Application.
17. However, in October 2025—before the Applicant even submitted its Application to the Board—the Board requested technical assistance from the Massachusetts Health Officers Association (the "MHOA") under its Subject Matter Expert ("SME") program.
18. The SME program is provides technical assistance regarding a limited number of specific issues.
19. The categories covered by the SME program does not include peer review services, which require licensed civil engineers.
20. The Board specifically requested that Glen Ayers ("Ayers") be assigned by the MHOA to advise the Board regarding the Applicant's yet-to-be filed application.

21. Despite the fact that such services are outside the scope of the SME program and the fact that Ayers lacked any qualifications or experience to provide such services, the MHOA agreed to this request.
22. Ayers holds a license as a registered sanitarian. He is not a registered professional engineer.
23. As a sanitarian, Ayers is only allowed to design a septic system with a design flow of less than 2,000 gallons per day (GPD). Systems larger than 2,000 GPD "shall be designed by a Massachusetts Registered Professional Engineer." See 310 CMR 15.220(1).
24. The Project's septic system has a design flow of 8,800 GPD—more than four times the size of the largest system Ayers is qualified to design.
25. In short, Ayers is completely unqualified to provide any technical review or advice regarding the proposed septic system for the Project.
26. Nevertheless, this is precisely what he did.
27. The Board regularly consulted with Ayers regarding the Application and had him attend meetings regarding the Application.
28. TetraTech provided peer review comments, which were addressed by the Applicant's engineer, Merrill Engineers and Land Surveyors ("Merrill").
29. In its final peer review memorandum, dated July 14, 2026, TetraTech advised the Board that it was satisfied that the Project would comply with all applicable Title 5 requirements, subject to recommended conditions—all of which were acceptable to the Applicant.
30. The Applicant continued to work with the Board through the summer, submitting additional revisions to its plans in response to the Board's input.

31. After receiving TetraTech's final peer review, the Chair and Vice Chair of the Board conspired to contrive a pretextual basis to deny the Application.
32. In furtherance of this plan, the Chair and Vice Chair arranged a meeting with Ayers at which, upon information and belief, they asked him to prepare a comment letter contradicting the conclusions of TetraTech—the Board's own peer review consultant.
33. Neither the Applicant nor TetraTech were invited to or informed of this meeting.
34. At the Board's meeting on September 15, 2026, the Applicant was provided a copy of a document drafted by Ayers, entitled "Title 5 Review Issues for 86 Plain Street Septic System Plans" (the "Ayers Memorandum").
35. In clear recognition of the fact that Ayers has no certification, training, education or experience to qualify him to comment on the Project, he did not sign the memorandum.
36. Instead, Health Agent Steve Resch—who is also not a licensed civil engineer—signed the Ayers Memorandum.
37. The Ayers Memorandum contains a number of demonstrably false and legally erroneous contentions regarding the technical compliance of the Project's septic system.
38. As previously noted, neither the author nor signatory of the Ayers Memorandum possessed the licenses, education or qualifications to make these claims.
39. The assertions in the Ayers Memorandum directly contradict the conclusions contained in the TetraTech peer review report, which (unlike the Ayers Memorandum) was authored by respected professional engineers with vast knowledge and expertise in designing and reviewing large septic systems, such as that proposed by the Applicant.

40. The Board's Chair directed the Health Agent not to share the Ayers Memorandum with TetraTech, notwithstanding the fact that the Ayers Memorandum purported to contradict TetraTech's conclusions.
41. The Board's Chair also directed the Health Agent not to invite TetraTech to the September 15 meeting.
42. Although the Ayers Memorandum was submitted to the Board on September 11, 2026, the Board's Chair directed the Health Agent not to provide a copy of it to the Applicant in advance of the September 15 meeting.
43. When the Applicant appeared at the September 15 meeting and saw the Ayers Memorandum for the first time, it asked the Board to continue the meeting so that the Applicant would have an opportunity to review it and respond to its claims.
44. Incredibly, the Board denied the Applicant's continuance request.
45. Instead, the Board voted to deny the Application in reliance on the Ayers Memorandum and in complete disregard of the expert peer review reports commissioned by the Board at the expense of the Applicant.
46. The Board delayed issuance of its written decision for several weeks and only did so after repeated inquiries by the Applicant.
47. The Board finally issued its Decision on October 6, 2026 (the "Decision"), in which it claims that "the proposed septic system, as submitted, contains material deficiencies and has not demonstrated compliance with Title 5 or adequate protection of public health, safety, welfare, and the environment."
48. The falsity of this claim is clear from the TetraTech peer review, the mere existence of which is not even acknowledged in the Decision.

49. Rather, the Decision relies exclusively on the incompetent assertions contained in the Ayers Memorandum, which the Board:

    a. Intentionally withheld from the Applicant until the September 15 meeting;

    b. Intentionally withheld from its own peer review expert, who was also not invited to the September 15 meeting;

    c. Prevented from being responded to by denying the Applicant's continuance request.

50. In short, after learning from its expert peer review consultant that the Project satisfied the requirements of Title 5, the Board orchestrated and carried out a scheme to achieve its predetermined objective to deny the Application, a scheme that included solicitation of the incompetent Ayers Memorandum, the Board's violation of basic due process by refusing the Applicant an opportunity to respond, and then voting to deny the Application based solely upon the Ayers Memorandum.

51. The pretextual nature of the Board's Decision is apparent from an email from the Health Agent, dated October 7, 2026, attached hereto as Exhibit B, in which he acknowledged that, after receiving the TetraTech report and the subsequent meeting on August 11, 2026,

> …the Board was quite reassured. But shortly after, the Board received letters from abutters raising issues they had not considered to that point (e.g. vernal pool). This led Glen [Ayers] to spend a lot of time thoroughly reviewing the plan itself and identifying issues distinct from those Tetra Tech found. Most Board members highly trusted Glen Ayers' advice because he invested significant time teaching each of them about septic systems and Title 5. So those issues he raised, which I communicated in the September 11th letter to the Board played a big role in Board's motion to deny the application on September 15th.
>
> I think some of the issues Glen [Ayers] raised seem to depend on how one interprets Title 5 and the I/A GUA, so it would be valuable for the Board to get Tetra Tech 's perspective on those issues, and possibly DEP's perspective. Had the Board not issued the denial Sept 15, and instead granted Mr. Guard's request to

have 30 days to prepare a response on those issues, it would have also enabled the Board to direct Tetra Tech to provide their independent analysis of those issues.

52. The Health Agent therefore acknowledged each of the following facts:

a. The Board was swayed by letters from abutters regarding wetlands issues, which are not within the Board's jurisdiction;

b. The contentions contained in the Ayers Memorandum were, in fact, "issues he raised," and the Health Agent merely relayed them to the Board in the Ayers Memorandum;

c. It would have been "valuable for the Board to get Tetra Tech's perspective on those issues," but this was prevented by the Chair's direction to the Health Agent to withhold the Ayers Memorandum from both the Applicant and TetraTech, his refusal to allow TetraTech to attend the September 15 meeting, and the Board's refusal to allow the Applicant's request for a continuance.

d. The Board's vote to deny the Application was made to appease disgruntled abutters and was based on the fact that the Board "highly trusted" Ayers, despite his utter lack of qualifications and the fact that the Applicant had spent months working with a highly respected engineering firm that the Board: (i) hired, (ii) required the Applicant to pay for, and (iii) then proceeded to completely ignore.

COUNT ONE
CERTIORARI PURSUANT TO G.L. c. 249, § 4

53. The Plaintiff repeats and realleges the facts set forth in paragraphs 1-52 above and incorporates same by reference.

54. The Board's Denial is arbitrary and capricious, legally erroneous, in excess of its authority and constitutes an abuse of discretion.

55. The Board was required to act "in a fair, judicial and reasonable manner upon the evidence as presented." Board of Health of Woburn v. Sousa, 338 Mass. 547, 553 (1959), citing Butler v. Town of E. Bridgewater, 330 Mass. 33, 38 (1953).

56. The Board's actions were anything but "fair, judicial and reasonable."

57. The Board willfully disregarded its own expert and instead based its Decision entirely on the speculative, unsupported and false assertions of an individual who was woefully unqualified to offer any opinion regarding the Project.

58. The Board clearly knew that the Ayers Memorandum would not withstand the slightest scrutiny, so it willfully prevented any such scrutiny by withholding the document from both the Applicant and the Board's peer reviewer, preventing the peer reviewer from attending the September 15 meeting, and denying the Applicant's request to continue the matter so that it could prepare a response.

59. The Board's conduct was in bad faith, grossly negligent, arbitrary and capricious, and deprived the Applicant of its due process rights under the United States Constitution and the Massachusetts Declaration of Rights.

WHEREFORE, the Plaintiff respectfully requests that this Honorable Court:

A. Annul the Board's Decision and all findings and orders contained therein;

B. Order the Board to approve the Plaintiff's Application for a Disposal Works Permit;

C. Find that the Board acted in bad faith or with gross negligence;

D. Award the Plaintiff its costs and attorney's fees;

E. Grant such other and further relief as the Court deems equitable and just.

Plaintiff,
86 Plain Street, LLC,
By its attorneys,

Date: October 30, 2026

Jonathan M. Silverstein

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EXHIBIT A

October 6, 2026

Certified Mail / Return Receipt Requested
#7019 0700 0000 2412 8599

86 Plain St, LLC
1165 Washington Street
Hanover, MA 02339

Notice of Denial of Disposal System Construction Permit

86 Plain Street, Medfield
Project 24-077 | Revision 3 dated July 31, 2026

This will confirm that Medfield Board of Health voted 4–1 at its meeting on September 15, 2026 to deny, without prejudice, the application and requested Disposal System Construction Permit for the proposed shared septic system serving the 24-unit, 80-bedroom development at 86 Plain Street, as submitted. This notice concerns the Revision 3 Septic System Design Plan dated July 31, 2026, and associated application materials.

Based on its review of the application, plans, supporting materials, applicable Title 5 requirements and MassDEP guidance, and the deficiencies identified in the September 11, 2026 review and discussed by the Board on the record at prior meetings and at the meeting identified above, the Board found that the proposed septic system, as submitted, contains material deficiencies and has not demonstrated compliance with Title 5 or adequate protection of public health, safety, welfare, and the environment. On that basis, the Board denied the application and requested permit as submitted.

You will note that the technical review expressly identified in the adopted motion is the September 11, 2026 report by Steve Resch, prepared with Glen Ayers, titled "Title 5 Review Issues for 86 Plain Street Septic System Plans." A copy is enclosed. It sets out the technical deficiencies and supporting regulatory references considered by the Board, together with the discussion on the record referenced in the motion.

The denial is without prejudice to the applicant's ability to submit a redesigned proposal addressing the identified deficiencies. The denial is without prejudice to submission of a new or substantially revised

Carol a Read

Medfield Board of Health

Carol Read, Chair
Kathleen Thompson, Vice Chair
John Cadigan MD
Colleen Corrodi MD
Jeff Kane

Enclosure: September 11, 2026 report, "Title 5 Review Issues for 86 Plain Street Septic System Plans."

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EXHIBIT B

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From: Steve Resch <sresch@medfield.net>
Sent: Wednesday, October 7, 2026 10:19 AM
To: Mark Casey <mark@ccb-llc.com>
Subject: Re: FW: Winder Estates

Mark,

Please find attached a written notification of the Board's Sept 15th vote to deny the DSCP application for 86 Plain St project. I have also mailed a copy via certified mail to your Hanover address.

Just reflecting on the process so far and options going forward I had some thoughts on next steps.

My sense was that after the August 11 BoH meeting where the Level 4 operator Mr Johnson from Effluential Technologies presented and answered many questions about Advantec systems, the Board was quite reassured. But shortly after, the Board received letters from abutters raising issues they had not considered to that point (e.g. vernal pool). This led Glen to spend a lot of time thoroughly reviewing the plan itself and identifying issues distinct from those Tetra Tech found. Most Board members highly trusted Glen Ayers' advice because he invested significant time teaching each of them about septic systems and Title 5. So those issues he raised, which I communicated in the September 11th letter to the Board played a big role in Board's motion to deny the application on September 15th.

I think some of the issues Glen raised seem to depend on how one interprets Title 5 and the I/A GUA, so it would be valuable for the Board to get Tetra Tech 's perspective on those issues, and possibly DEP's perspective. Had the Board not issued the denial Sept 15, and instead granted Mr. Guard's request to have 30 days to prepare a response on those issues, it would have also enabled the Board to direct Tetra Tech to provide their independent analysis of those issues.

So if you plan to resubmit a new application, I think it will be vital to address those issues raised in the Sept 11 letter. And, I think we should try again (as you originally suggested) to have a technical meeting with your engineers, Tetra Tech, me, and Jeff Kane from our BoH who is an engineer. Since we are sort of resetting, I think it will be possible to have this technical working session separate from and in advance of a public BoH meeting.

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Feel free to call if you want to discuss more.

Thanks,
Steve

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Steve Resch Director of Public Health, Town of Medfield

[web][main office: 508.906.3006][work mobile: 781.956.9678]

TOWN OF MEDFIELD
BOARD OF HEALTH



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