



**Town of Wareham
Board of Health**

Meeting Minutes

October 20, 2010

**Present: Diane Allen, R. N., Chairman
Dr. Charles Gleason, M. D., Member
Dr. Thomas L. Gleason, M. D., Associate Member
Lisa T. Irish, Associate Member**

Robert Ethier, Health Agent

Reorganization of Board Members/Signing of Minutes

- Allen:** Today is October 20th, 2010. This is the Board of Health meeting. My name is Diane Allen, a Board member and all the members are present. The first thing on the agenda is the reorganization of the Board members. Our Chairman, Guy Campinha, resigned due to a commitment to the Town and is unable to serve on our committee anymore. So, we need to nominate a new chairman.
- C. Gleason:** I nominate Diane Allen.
- Irish:** Second
- Allen:** All in favor. Any discussion? No. Okay. So, we have to vote. All in favor? I abstain. 3 – 0 – 0.
- T. Gleason:** We need a new member.
- Allen:** Because there is a seat on the Board, now we need to have a new member and Dr. Thomas Gleason is nominated as a new member.
- Irish:** Second.
- Allen:** I nominate you as a new member. All in favor. 3 – 0.
- T. Gleason:** Does that have to be approved by the Board of Selectmen?
- Ethier:** Negative. They just appoint the Board Members and the reorganization is done within the Board itself. I think at this point, the Board knows that we need to apply for and do one more Associate Member. So, I know that two applications were put in and it seems that they were not considered last night at that meeting. Some of them probably will be here and maybe the Board wants to just mention it to them afterwards and see what the Board thinks. They both are going to be here tonight. Bob Brady and Frank DeFelice. They said that they were going to come just to see the Board. Because they are the ones that are proposing to be a member.
- C. Gleason:** If we propose them, it is not sure of that.
- Ethier:** Right. We are not guaranteed that they are going to okay it. Mr. Brady tried for the CETA Board last night and was declined.

T. Gleason: We had nominated him previously to this Board.
Allen: Twice. Before you. It was twice. But do we have other candidates?
Ethier: No. We do not.
Allen: Has it gone out to the public?
Ethier: They said they were going to advertise, but these came in in the meantime. I have to wait to see what they are going to do. I will let the Board know by e-mail what their plans are, if they are going to advertise or not.

T. Gleason: Okay. Would you like to review the minutes?
Ethier: I know you had some concerns about the minutes that were e-mailed to you. We were way behind there.

Irish: Do we have a sample? Does it have to be verbatim or can it be. Some of what I have read it not verbatim. It is an easier way and we always have the tape as backup or do we tape over?

Ethier: No. We have the tapes. We save the tapes. I have explained it to the lady that transcribes the minutes but she still (0042). If I have to, I will go through them and just

Irish: It would be less work for her.

Ethier: We do have the back ups in case anything is questioned.

Allen: Okay. Are we all set? All right.

4:05 p.m. **214 Plymouth Avenue – J.C. Engineering – Variance to State & Local Regulations – Upgrade Variances granted**

Allen: Could you state your name for the record please.

Pimental: Mike Pimental.

Allen: Mr. Ethier.

Ethier: This is a request for variances 214 Plymouth Avenue, East Wareham. If you would like you can have Mr. Pimental give his side of the story for the variance request and then I can tell you what I know about it and the recommendations I would make. Here is the letter for the request.

Pimental: This project involves the upgrade of an existing septic system located at 214 Plymouth Avenue. The home currently has a single cesspool, located at the northwest corner of the property. What we are proposing to do is provide a Title V septic system consisting of a tank, distribution box and (0094). We are asking for two variances, one to the local regulations, which is required due to the fact that the property is located in a Zone Two, which obviously (0096). So we are asking for a variance from having to provide for that additional bedroom. The second one is a local (0098) of 2.8 to the bulkhead of the house for the leaching system. We did provide a (0099) member and liner which is an added protection, even though it is not really necessary but we provided it anyway. And that is essentially it.

Allen: Mr. Ethier, your recommendation?

Ethier: Would you explain where the 2. something feet is? It is a variance of 2.8 feet? And a liner has been provided?

Pimental: Correct.

Ethier: My recommendation would be the variance request to not design for the extra bedroom is a response to the request by the DEP not to ask for that in a Zone Two because you can not design for an extra bedroom. And seeings as how we have a regulation, they have to come before the Board to ask not to design for an extra bedroom. So, that one is fine. In the past we have historically allowed it.

T. Gleason: So this would remain a two bedroom dwelling?

Ethier: Correct. That would be on the plan. I would suggest, members of the Board, that we put it also on the As-Built. Because when people come back in to inquire if there is ever a sale of the real estate or the property, I have to look at the As-Built and if I don't see the two bedroom requirement, then I wouldn't know. But I would suggest that we allow that variance.

Allen: Is there a Motion that we grant the variance?

T. Gleason: I so move.

C. Gleason: I agree

Allen: All right. Any questions? Thank you.

**4:10 p.m. 10 Little Harbor Road – Charles Rowley
Variance Granted**

Rowley: This project that we are doing is an upgrade to an existing 3 bedroom dwelling located at 10 Little Harbor Road. It is across the street from the Little Harbor Golf Club. We did soil tests there back in August and sent the soil sample from the deepest portion of the project to a laboratory and had it tested because of the depth of the soil. We found that based on the test results that it was right on the border between the sand and the loamy sand. By using the grades of the existing plumbing that comes out of the house, we could get a separation of 3.54 feet I believe it is. The perc tests later developed was about a 7 – 8 minute range and in Title V in an upgrade, if it is greater than 5 minutes per inch, you don't need a waiver for a 4 foot separation but anything less than that, you would. So, we are just asking for a little bit less than a half a foot waiver on that. So we end up with up with 3 and a half feet rather than 4 feet.

Allen: Mr. Ethier?

Ethier: Yes, this is a Title V variance that we have granted quite a bit. Most people ask for the entire foot, right Mr. Rowley?

Rowley: Yes, when it is needed, I ask. Yes.

Ethier: So, it is 3.54 instead of 4, right?

Rowley: Correct.

Ethier: So, I would suggest that you grant the variance for that.

T. Gleason: I move that we grant the variance to 10 Little Harbor Road, requesting a reduction in minimum depth to high ground water from 4 feet to 3.54 feet.

Allen: I second it.

4:15 p.m. **Todd Bettencourt, Application for Tattoo Practitioner – Perfect Pain**

Application approval pending until November meeting and submission of 2nd shot proof.

Bertencourt: How are you today?

Allen: Good, thank you.

Bettencourt: I believe I have all the

Allen: The only thing

Bettencourt: ...my proof of vaccine?

Allen: Correct.

Bettencourt: (0164) might have that.

T. Gleason: May I see it? It is a series of three shots.

Bettencourt: Correct. My next shot will be on the 4th. It is within the next 6 months. That's when I will get the 3rd one.

T. Gleason: Do we have the documentation that it has been completed?

Allen: That I couldn't find.

Bettencourt: I believe I asked him and he said (0171).

Allen: It was Hepatitis B.

Burke: Once the series was started, then it was okay but we were going to ask the Board for recommendations.

T. Gleason: Did you have antibody testing done before you started the series?

Bettencourt: I did with my primary care.

T. Gleason: And that was?

Bettencourt: I had the blood work done before taking the vaccine was done to make sure I was able to take it.

T. Gleason: All right. So, presumably the Hepatitis B antibody was negative. Is that correct?

Bettencourt: Correct. I didn't get any paperwork from it. He just has it in his file.

T. Gleason: Well, the question is, do we (0179) completed the course for approval?

Allen: Correct. Do you know the answer to this question? Hepatitis B vaccine, do they have to have the series completed before they can be workers, practitioners?

Ethier: That was what the Board asked for in the past. When is the second shot due?

Bettencourt: By November

Allen: 5th.

Bettencourt: 4th.

Allen: And then 6 months after that.

Ethier: Right and then they have to check the titus and stuff. But usually it takes We have had it 2 ways in the past. Most recently, I think it was decided by the Board that if the series was started and then after the 2nd shot, if the documentation was provided to the Board, then they were able to operate as a Practitioner. So, that would be up to the Board. Maybe the doctor has an opinion on that.

T. Gleason: Well, it would be nice to have proof that you had the 2nd shot.
Bettencourt: Sure.
T. Gleason: Maybe we could delay it until we have proof of the 2nd shot.
Allen: Which I think is our next meeting. November 4th.
Ethier: Well, if the Board wishes, it's around the 4th correct?
Bettencourt: The 4th.
Ethier: You can make a decision, if I get the paperwork and you can decide at that meeting and not have to wait until the next meeting.
T. Gleason: That's fine with me.
Ethier: That afternoon of the 4th.
Bettencourt: I will come right in with it.
T. Gleason: All right then. I would move that pending documentation of the 2nd Hepatitis B shot, the approval for Apprentice Practitioner be granted.
C. Gleason: Seconded.
Allen: All in favor. Thank you.
T. Gleason: You need to present proof to Mr. Ethier on November 4th.
Bettencourt: Absolutely. I have it in the morning and I will right after I get the shot.

Health Agents Report for October 20, 2010

Chapter II Inspections – 1
 Perc Tests - 2
 Title V Inspections – 8
 Complaints Investigated
 Garbage & Nuisance - 1
 Food Service - 1
 Emergency Response – 1 Illegal - teardown of garage.

The Food Service will be coming up next on our agenda. That is Burger King. I think there are some representatives here. The flu clinic kicks off tomorrow here in the cafeteria. There will be 6 nurses, 5 or 6 volunteers and the staff of the Board of Health. We are going to be given out 270, that have signed up. As we do in all cases, I think it is important to make sure all emergency personnel, police, fire and EMS is vaccinated because they in the trenches all the time. So, they will be vaccinated along with Town employees who work for the Town, so we don't spread infections.

Allen: Did you say you were taking some insurances or you were able to charge some insurances?
Ethier: We are going to be taking all insurances. We just purchased and hopefully the Coalition will pay for it, a copy machine which we need to copy the insurance cards. The State is asking that everybody get reimbursed with all this. We have a good system. We hope it's going to work well. All our flu clinics in the past do. It is free for people who don't have insurance.
Allen: It is free for everybody.
Ethier: It is free for everybody, yes.

Allen: Okay. You all set?

4:20 p.m. **3012A Cranberry Highway - Burger King – Food Code Violation
Warning Issued**

Allen: Would you state your name please?

Unk: My name is (264 Robert Smith). I am the District Manager.

Unk: (Thomas Crawford 0265) the Assistant Manager.

Allen: Mr. Ethier.

Ethier: I got a call from a citizen in Wareham who said that they had driven through and got some meal for the children. I think in the morning, came home, gave their children the meal and then during that, the wife had seen the container, which is this container of milk, and they saved it for us. And the wife asked them, did you open it by sticking your finger in the container. He said, "No. I didn't do that. I thought you did that". So, they got nervous. They called Burger King and spoke with someone at Burger King and then they called me and said they felt like there was some contamination there and they were worried that their children might become ill. So, I called the Department of Public Health Food Protection Program and told them the problem. As a result of this, the 1999 Food Code has a provision in here under 3, 2, 0, 2, 15 for packaging integrity. Food packages shall be in good condition and protect the integrity of the contents, so that no food is exposed to alteration or potential contamination. We weren't sure how this happened. So, I called the manager and he told me that they had put this in the refrigerator or something where they sell these milks from. This was used to add to coffee for those who buy coffee. So they just grabbed the wrong container. My contention, as is the DPH's contention, is that they shouldn't be mixed together. If someone from Burger King chose to put something in there and children were taking that, then there could have been a real problem and we weren't sure until afterwards. And of course the parents until hours afterwards were not sure that that wasn't really the case. So I brought it before the Board because it is a serious offense and although I know it wasn't intended to be, it could have been.

T. Gleason: So, we are asked to take what action?

Ethier: Well, at this point, I told the Department of Public Health Food Protection Program that my Board would be very interested in bringing it before them and what did they suggest. Did they suggest a fine at this point and I kind of agreed with them that they thought it would be a good idea to bring before, see what their story is, give them a warning that this can not happen. If it happens again, it will be a fine according to Code.

T. Gleason: And what is your side? What is your position?

Unk: I am the District Manager and we came up with a solution to help. The task for Burger King is to have practice. A lot of customers request

milk instead of half and half in their coffee. So we would open a carton and pour the milk in the coffee cup. Clearly, you can see that the carton is open. So, that is not a retail purchase. Recently Burger King switched to these plastic bottles where if you don't mark them or do something with them and you do pour a little out, you could accidentally grab them to serve them, which is what happened in this case. So, we thought if we removed the label and still keep the expiration date on the top, that you could clearly see that this is an opened container of milk, keep it in a separate (296) away from the other bottles of milk in the refrigerator, that we would prevent this from ever happening again.

T. Gleason:

I think the key is separation.

Allen:

Yes but you only have the one refrigerator. You can like separate them in the refrigerator or do you have

Unk:

We can put them on a different shelf in a different section. We just have the one under the counter refrigerator. But I thought if we took the label off, you know, you never serve milk without a label, and you could see that.

Allen:

I guess you would assume that it was milk but there is no label on it.

T. Gleason:

Have you talked to your employees about it?

Unk:

Yes. So, if you approve that method, we could do that or

T. Gleason:

Well, the problem is still being sure that that is milk in there, if you take the label off.

Allen:

I know it will be white and it will look like milk but you don't I don't know if there is a way you could just take off the bottom in part.

Unk:

We can take off the bottom. It doesn't say fat free milk right here and we could cut it right here. Do what ever you recommend.

T. Gleason:

But again, the key is separation.

Unk:

Right but you add one (309) away from the bottles that are stored for customers.

Allen:

Sounds reasonable. Anybody have any comments?

Ethier:

I think my conversations with the Food Protection people was that it shouldn't be mixed together. If you are going to sell milk It is the same thing as when I go into a retail food or a gas station that sells food, someone that sells coffee and milk for instance or even a Tedeschie's, sometimes people put their food that they are going to eat for lunch or they bring their lunch and they put it in a cooler and it is mixed with other people's food. That is not acceptable. In this case, if you are going to sell milk, you can't have something there that you are using to sell another product. In other words, if you are mixing something for coffee, it shouldn't be in the same. There is too much area for contaminations.

Irish:

Is it too much of a burden to ask for another small refrigerator just for the milk?

Allen:

Or even put the milk on ice or something. It is only one small container, right?

Unk:

We could put it on ice.

Allen: I mean, I don't know if that is appropriate or not.
Ethier: That would be acceptable. Anything is acceptable. It is not going to be on the counter very long if you put a little container with ice and put the milk in there and when it is empty, you put a new one in there but you don't confuse it with what's in there. That would be acceptable to us if it is acceptable to the Board.

T. Gleason: I think that would be fine.
Allen: Okay.
Unk: Okay.
T. Gleason: What do we need to do on that?
Allen: Someone just make a motion that we will just warn them to change the practice.

Ethier: The Board vote that it's a warning or just agree that the next time they come before the Board then they will be fined for any infractions because they know about it now. I think it is a required as a vote.

T. Gleason: Okay. It is a recommendation I think, separation, separate container, ice, change the label, keep it separate from any other milk.

Allen: Okay.
Unk: Okay. Thank you.
T. Gleason: Do we have to follow up on that?
Ethier: Yes. I will periodically go in and perform checks and I will have Dave, our Inspector, do the same.
Allen: Thank you.

4:25 p. m. 11 Chippewa Drive, Chapter II – Order to Appear

Allen: They are not here?
Ethier: No. I would say we go on. What is going to happen Madam Chairman and members of the Board, if they fail to appear before the Board for a violation, which we have already given them 30 days and exceeded that by some, I will just take that and file it in 4th District Court and have them picked up on a Warrant that they failed to appear.
Allen: Okay.

4:30p.m. 12 Chippewa Drive, Chapter II – Order to Appear

Allen: Is there anyone here for 12 Chippewa Drive?
Ethier: Same situation.
T. Gleason: Court is going to be busy.

**4:35p.m. 5 Shaker Avenue, Chapter II – Order to Appear
30 Day extension granted**

Allen: Have a seat and state your name please.
Unk: (356).
Viveiros: I can give you a little description of what happened as to 5 Shaker

Avenue. I have spoken with you by telephone, Ms. Lawson. There was an anonymous complaint a while back at 5 Shaker Avenue. I went out there and the property was filthy and there was garbage bags at the side of the property. Your father, is that right, had passed away. His automobile was still there. A lot of old clothes were in the house. Blankets and other things were all scattered around the yard of course providing harborage for rodents and other animals. I did send a letter out to Diane, but I sent it at 5 Shaker Avenue, but you weren't there. So, I sent it to the Plymouth address and she did receive it and I sent out on April the 5th, 2010, the usual Order to Correct. It was a violation of 14, 10, 6, 0, 2, which is land and it is the owner of any parcel shall be responsible for maintaining such parcel, and it goes on to say, healthy environment. I added, remove all rubbish, garbage and debris and all sources of filth from the property. Also, remove the bags of clothing against the dwelling. That must be removed. I went back again, spoke with the neighbor, who was a nice gentleman and when I went back, it was the same thing. The garbage, the rubbish, the clothing and the debris all next to the property.

Allen:

And when was this when we went back?

Viveiros:

We went back on a re-inspection on August 30th, 2010 and I wrote garbage, rubbish and debris still remain on the property. Open bags of rubbish and clothing still scattered at back of property. Unregistered vehicle in driveway and you can not have an unregistered vehicle in the driveway. You can have one in the back yard but not in the front yard where this one was. I subsequently talked to Diane, Ms. Lawson, and I guess there was a question as to who the responsible party was.

Lawson:

My brother was the administrator of my Dad's estate or has been and I have been fighting for a year and a half to get administratrix on it and we were going to yesterday in Brockton Court. So that I am an administrator now but for the past year we went and bagged that trash over and over and he has taken money out of the estate supposedly to get a dumpster and he hasn't done it. And now there is (402). We just approved yesterday. And I still have to wait for them to mail me out the paperwork in order to go get the locks taken off. I know the neighbors are wonderful and were good to my Dad. I have notified him but he just hasn't done anything. He just spent all the money in the estate and we had to pay taxes on it. He hasn't done anything at all.

Allen:

So, what is your plan to do?

Lawson:

I plan, as soon as I get the paperwork, to take care of everything. We have to pay more taxes. We have to clean out the yard and my fiancé is going to do it, like pay for everything and then we are going to sell the house. But as soon as I can legally get in there, I will take care of it. It is just that until I get the paper from the Court, I can't do anything. He just isn't willing to do anything at all.

Irish:

I just have a question why Ms. Lawson is here versus the executor?

Lawson:

(416).

Allen: So, where do we go from here?

Ethier: If I may Madam Chairman. In the past when this happens, we usually give the person, like yourself, 30 more days. Do you think it is going to be accomplished in 30 days?

Lawson: Definitely. I am just waiting. We had to have the estate bonded and we dropped that paper off yesterday. As soon as we left the Court, we got the bonding paper and went to Court and did that. So, we should have the legal papers within a week or so and as soon as I get it, we are cleaning it up. I mean the neighbors were wonderful to my Dad. We didn't want any of this to happen but my brother just has not done anything.

Ethier: Well, what usually happens is that under the State Sanitary Code, which is the minimum standard of (428) for human habitation, you are allowed, we are allowed as the Board of Health, to charge 10 dollars a day, no less than 10 dollars a day and no more than 500 dollars a day and with a stubborn case like this, I understand how you explained it to the Board, but we usually charge as much as we can because we have gone out numerous times for the fine, for a violation like this and it is usually from the day of the original violation. So, if you can get it done in 30 days, I would suggest to the Board that we wouldn't fine them. But if they don't then we would initiate the standards for fining.

Lawson: We went out there and we bagged and cleaned up the yard but he has just taken all the money and we have still to pay taxes. We have money from (439) we have to pay. He hasn't done anything at all. So, it is now just us getting in there legally to take care of it all.

Viverios: To the Chair, you obviously have minutes of the meeting where you have said that you could get it done in 30 days. I would recommend that a formal letter from yourself saying that pursuant to the meeting that we had here, you are requesting 30 days extension as recommended by the Board and I will send you out a letter saying that it has been approved or denied. Obviously it will be approved. I would like to handle it that way if is all right.

Allen: All in agreement?

Viverios: Is that all right Bob?

Ethier: I think that would be acceptable if it is okay with the Board. We will put her on as a courtesy on December 1st, at the next hearing. If it is not cleaned up by then, the Board can administer the fines.

Lawson: Thank you.

Viverios: I also have something here that I am going to give you. I have a note here from an Evelyn Holm and she gave her number. Actually she wanted to buy the property.

Allen: There is no one in the audience that has any questions or anything.

T. Gleason: Do we have to vote on it?

Ethier: I would say that it is a recommendation by the Board. Unless it is a fine, I don't think we have to vote on it.

Allen: The Board has agreed to give 5 Shaker Avenue 30 days to clean up the

property and if it is not cleaned up by then, then you would reappear on December 1st and we will go from there.

4:40 p.m.

**26 Avenue A, Chapter II - Order to Appear
30 Day extension granted**

Allen:

Mr. Viverios?

Viverios:

I went out to 26 Avenue A and did an inspection, sent out a letter on February 15th, 2010 and the letter was again, localized to land. And my comments were remove all rubbish, debris and all sources of filth from the property. And Unregistered vehicles must be registered or removed. Mr. (Fantasia), I understand that you are in Florida, is that right?

Fantasia:

I was in Florida at that time.

Viverios:

And the people across the street pick up the mail?

Fantasia:

Yes.

Viverios:

Because I know when I was there inspecting, they were on the phone to you. When I went there, this property by the way is very close to the wetlands in the back, I took a number of pictures and I would say that there is a significant amount of rubbish and debris on this property and I think the pictures speak for themselves. I spoke with Mr. Fantasia and I am not sure what your response was but that you were going to try your best.

Fantasia:

Two of my sons went there and cleaned up the best we could. I disagree with what you say, unregistered vehicles. There are no unregistered vehicles there. And garbage, there is no garbage.

Viverios:

There was some garbage when I was there but it was mostly (tape ends)

Fantasia:

You know at the Narrow's Crossing, people are fishing there all the time and they throw their stuff in the water and I collect it all. I make more trips to the dump than anybody here.

Viverios:

At the expense of you getting mad at me, the debris and rubbish on this property is significant.

Allen:

So, you went out in February and then again in April?

Viverios:

It would have been 30 days after, March. I have my letter here, an inspection was conducted on property located at 26 Avenue A, April 20, 2010. The owner did not comply with the Correct letter sent on February 15th, rubbish and debris remain scattered around this property. And that is where we are at.

Fantasia:

You mentioned branches in the letter and I have (0010), if that's the branches you are talking about.

Viverios:

There was a bunch of branches all piled up but I can almost live with that.

Allen:

Yes, but there is also a lot of old bikes and metal and

Fantasia:

That is all gone, Mam.

Allen:

That is all gone now?

Fantasia:

That is gone. It is all cleaned up.

Ethier: Madam Chairman and members of the Board, can I read you a description under the State Sanitary Code for rubbish? It means combustible and non combustible waste materials except garbage and included but is not limited to such material as paper, rags, cartons, boxes, wood, excelcier, rubber, leather, tree branches, yard trimmings, grass clippings, tin can, metals, mineral matter, glass, crockery, dust and residue from the burning of wood, coal, coke and other combustible materials. Now, the Code says garbage and rubbish because that is how it is written. It means if there is one piece of garbage on there, the rubbish would probably be contained in the same, or it is definitely contained in the same section of the Code. So, here there is a collection of rubbish, more so than garbage. But as you can see, it is substantial.

Viverios: For the record, Mr. Fantasia called me around 4/6/2010 and said the he would have his son come in and clean up the mess. Well, that didn't happen at that time.

Fantasia: Yes it did happen. Maybe not to your satisfaction but it did happen. They made a couple trips to the dump.

Viverios: Well, I can tell you that I was there again for about the 4th time, maybe 4 or 5 weeks ago and it certainly still wasn't to my satisfaction. And I am not asking for an awful lot. I think the pictures speak for themselves.

Fantasia: Could I see the pictures, please? I know I cleaned up one of those places. The biggest pile.

Viverios: What about the debris inside the camper? Did you do anything with that?

Fantasia: That is still there. I think the day you went there, I had a break in. The camper door was open. Two doors were broken open.

Viverios: I don't remember it being open. No, I remember them being closed because if they were open, I would have taken a peek in to see what kind of debris was in there. They were closed.

Fantasia: This is gone. The debris is gone. The camper is still there. My kids have (0086). This is definitely cleaned up. This is definitely cleaned up. This is the same. There is a lot of stuff.

Ethier: Madam Chairman, at the expense of time here, I would say that it would be the same situation as the case before. I can tell you that when we get to 4th District Court, the judge is not lenient for issues like this and the photos speak for themselves. The last case was a 3 and a half jury trial in which the owner of the property lost to the Board of Health for their Complaints filed and was issued an Order to pay \$5,000 if he wasn't cleaned up in 30 days. Now, that is over and above the Board of Health violation fine.

T. Gleason: Okay but the Court gave him another 30 days at that point?

Ethier: At that point. So, it would behoove this gentleman to clean up and clean up according to the State Sanitary Code and it would save a lot of issues and a lot of time in Court appearances.

Irish: Do you live at this property?

Fantasia: Yes.

Irish: So, you are not based in Florida?

Fantasia: No, I go to Florida in January, from January to May. That's why I wasn't there at the time. The boat is legally registered.

Viverios: My intent was not to show the boat on that. It was to show the distance between that and the wetlands.

Irish: I am okay with the 30 days but I am worried about him leaving in January to get everything settled.

Ethier: Well, the Board could issue a 30 day extension and re-inspection and a reappearance on December 1st at the next Board of Health hearing and if it is not cleaned up, the Board will issue the fines according to the State Sanitary Code. And if you haven't heard, there is no less than \$10 a day and no more than \$500 a day according to the violation.

Fantasia: I have campers. Can I use them for storage? Is that illegal?

Ethier: Are they registered campers, sir?

Fantasia: You can't get them registered.

Ethier: I would turn this over to Zoning because I don't believe you can have unregistered vehicles all over the place as storage.

Allen: So, as far as our Board is concerned, we are going to give you a 30 day extension to clean up and you are to appear December 1st and Mr. Viverios could you go out and take new pictures like just before the meeting? So we can see the property.

Viverios: Sure.

Allen: Does anybody in the audience have any questions or concerns.

Viverios: The only thing I have, just like the other situation that we had, is I am requesting from the Board, that you send me a letter asking for a 30 day extension and then I can grant it. That makes it easier.

Irish: Do you ever go out to properties with the owner and point out or supervise

Allen: That was going to be my next thing is, do you need help?

Fantasia: I would appreciate.... I mean, to me a lot of the stuff is done already, except for the campers. The campers are there. I have no control over them right now. I don't have a pickup truck anymore. I can't move them.

Viverios: I think this is more than a fine line between storing something in a camper and having that camper right up to the top, right up to the ceiling with all types of debris. That is certainly a harborage for animals and rodents and all of that type of thing. And as far as you would have liked to have gone out with me, obviously you weren't there when I went for the inspection. It was the people across the street. What I will do is before the next meeting that you are required to come to, I will go down and of course, I would love to have you be there.

Allen: Tell him exactly what needs to go.

Viverios: You look at it and it is pretty obvious what has to be done.

Allen: Okay. Any further questions? Okay. Thank you.

4:45 p.m.

17 DeeJay Lane – Chapter II – Order to Appear

Viverios: DeeJay Lane is a chronic problem. I went down there initially and again, garbage, rubbish and in the interest of time, I won't pass out pictures. I have had a very difficult time trying to find somebody in domicile at this particular address and knowing that we were going to have this meeting today and assuming that somebody would come in and say, I cleaned it all up, I was prepared to say that I was there 3 or 4 days ago and nothing has been cleaned up. But I can not find the owner on the site. The Assessors office says that perhaps the owner is not there anymore. But the taxes are paid and everything is up to date.

Ethier: Madam Chairman, what happened here, I believe we had some information that that might have been sold or change of ownership. That would be the answer to our prayers because since I started here, I have been at that house on a yearly basis to get them to clean up something and something else turns up to be a problem. So, we will follow up on that and if there isn't a bank or a new owner or a new person that is planning on renovating or something, then I will file in 4th District Court.

T. Gleason: Did you send a registered note to the owner?

Viverios: Yes.

T. Gleason: Did somebody sign for it?

Viverios: No.

Allen: Did it come back to you?

Viverios: No, nobody did sign for it. We sent it out but the green card never did come back.

Ethier: So, I will take it to Court from here if we don't hear anything in the next few days.

Viverios: There has been nothing done at all because I go to that area quite a lot, up near Tedeschi's and while I am there I just kind of ride by and nothing. I think that although there is curtains in the window and that type of thing, I don't think there is anybody in it.

Allen: Okay. Thank you.

4:50 p.m.

**42 Plymouth Avenue, Collins Civil Engineering Group – Variance –
Local regulations – Upgrade
Variance granted with Deed Restriction**

Allen: Just state your name.

Collins: (George) Collins, Registered Professional Engineer, Collins Civil Engineering, West Bridgewater. We are requesting local upgrade approval request for a septic (0116). Title V variance allowing up to design for a 2 bedroom. We are not increasing flow to the septic. Typically Title V requires a minimum design, this being a 1 bedroom house and probably a deed restriction would be required. In addition to that we are requesting a local upgrade approval request for a reduction in

the set back from the SAS to the foundation. It requires 20 feet and we are requesting a reduction down to 18 feet.

Ethier: My question would be, is it in a Zone 2?

Collins: Yes, it is.

Ethier: So, that is the reason for and you can't design for the extra bedroom but in this case you have to meet Title V and design for the 2 bedroom. So, that is going to be a registered Deed Restriction in the registry.

Collins: Yes.

Ethier: You, as an engineer could file that just stating what the Once it is recorded, I will need a copy of the recorded deed and also if you could put it on the plan and the As-Built, I would appreciate that.

T. Gleason: I make a Motion that we grant the Variance as requested by Collins Civil Engineering for a Variance to Local Regulations with an upgrade as described.

Allen: Motion has been made and seconded. Any questions?

4:55 p.m. **260 County Road, Victor Brier – Order to Appear**
Make piles smaller, no further shells until resolved, grind stumps, crush present shell, reappear on November 17th.

Allen: Mr. Ethier?

Ethier: Good evening, sir. We received a complaint by letter form that said, for several months we have experienced strong stench, odors in our neighborhood, late hours of the night continuing into early morning. The odor is very repulsive in nature, creating a sense of nausea, ruin the fresh air we used to enjoy. It is hampering our daily lives in many ways. It goes on to say, small children are affected. They are affected when they are eating and to have outside activities especially in the evening is difficult. It is signed by 6 or 8 residents along Blackmore Pond Road. After receiving this, I contacted Bob Johnson who is a solid waste engineer and representative of Department of Environmental Protection. Walked the site with Mr. Brier. He was very helpful. We went out there and tried to determine if there were odors on the site, if they migrated off the site and what might be causing the problem. I have some photos here that will describe. This is a pile of shells that Mr. Brier is permitted to stockpile and sell as landscape material on this site on County Road. The pile is quite large. We determined that it was a problem at the facility that sends it to Mr. Brier. So, they took over from there. I gave them a couple of weeks. They went over and spoke with the people who provide the shells to Mr. Brier's site. Then they issued I got a copy of this, which I assume you got from the DEP. It says, to County Road Recycling - Notice of Non-Compliance. Failure to take adequate action in response to this notice could result in serious legal consequences. (Reads Notice from DEP). He has a permit to do what he is doing on the site. This is a Commercial Permit. He must get clean

shells and eliminate these odors. But he claims he can't do anything about the odors, which is the reason why I issued these Massachusetts Federal Law Order. Because I know they were there. We had so many witnesses who say they were there and they stated that it is unbearable at times. Mr. Brier, who is here today, has always been a good citizen and he has always been there when we have had problems in the past and we are hoping that we can get this resolved and find a way that this will be remediated and these people will not have to live like that.

Brier:

I was under the impression that by coming here this evening, maybe it is my own ignorance but that this was going to be a discussion, not an official hearing. The reason why I am saying that, I am getting the impression now that it is some kind of a legal hearing and if that is the case, I would like to exercise my right to have an attorney present. I didn't enough time to get one. I received the letter on Monday. Then when I actually looked at it and read it, there was a section in there that was put in there that said, we would advise you to bring an attorney. All along I thought this was going to be a discussion like it had been in the past. I am willing to supply you with some information on this. I think everything Bob has said to you is pretty exact except with the exception of the State ruling and what they (229) on the shells. There is nothing in the form that even mentions that. When they are talking about (230) it is in reference to the stockpiling of leaves, wood and mulch. That is what I am permitted for. As far as the item, the shells, those are a landscaping material, which is an excepted (232). I am not going to get into that because I don't feel as if I have the legality to make those statements. I know we were supposed to have this hearing October 6th and I was asked to wait a couple weeks as two of the members were not going to be present. I said fine. I am going to ask the Board if I could be granted the same thing and continue this so I can have my attorney here the next time to make some statements. And also in terms of the neighbors that complained, our closest neighbor to the property which is 100 feet from the shells and that he could voice his opinion in terms of this odor. But I also would like to get Mr. (240). This is a standard operating procedure of what goes on with those shells prior to them coming to me. You will notice on there it has to do with the new FDA thing, inspections, administration, hours, everything that was on prior to them coming to me. This was all set by DEP and then before I got them. When it was determined that we had an odor, If you want me to continue, I will. If you think you are going to do a continuation, I would appreciate that.

Ethier:

If I may Madam Chairman and the Board. We are not here to issue fines. This is just an exploratory hearing because we have had these complaints. I think we owe it to the neighbors that live there who are suffering from this and you have been very helpful. You are offered the courtesy to bring a lawyer in here if you chose to.

Brier:

Which I agree that I should have. I am not here to argue. I just want to

give a testimony that I don't feel as though the odor.... There is an odor. There is a slight odor right up next to the shells. But I have noticed that since the DEP spoke to the cleaning company that does this process, that the shells that have been brought in since then, there is absolutely zero. If you like I can ask my neighbor to come up and testify to the fact. These other people are 1200, 1400 feet away, they are on another street. If we use the assumption that rule of thumb is to use our nose and measure it that way for what is offensive and what isn't offensive. And I want to know scientifically how do we prove that there is an odor like that. We have been to the site and I have been to the site of the complaint and I haven't smelled any. I think that I should at least have the chance to prove that scientifically there isn't a claim here to this nuisance. I don't want anybody to be bothered by anything that I do on my property. Furthermore, I can invite these people to come to my property and the sad part about it is, when I got invited to theirs, when I showed up, they locked their doors, pulled their curtains and shut the lights. I can invite them to mine and let them in. They came in with Bob. They won't let me on their property or their site. There is tons of (271) from the Sippican River and the (Cohasset Brook), up and down. And if you are there, a lot of times you will find you will find that low tide (273) and that is what I smelled at any time I was ever down there. It wasn't from my property.

- T. Gleason:** May I ask you a few questions? On this paper, it says here on the shells and this goes back to September 21st, 2009, you were ordered to immediately to cease accepting additional deliveries of new clam shells.
- Brier:** (290).
- Allen:** It says that DEP checked the company supplying you with the shells to On page 3.
- T. Gleason:** It says #2 shells, down at the bottom, last paragraph.
- Brier:** Yes, that's a typo error.
- T. Gleason:** I don't think so.
- Brier:** Well, it is. That has never been (293), never. September 21st was when Bob was there with DEP, 2010. That is a typo error. I don't mean to sound foolish.
- Allen:** You are saying that the typo is 2009 was 2010?
- Brier:** Yes.
- Allen:** Or the supplies?
- Brier:** No, 2010. Matter of fact, also on my notice to them
- T. Gleason:** Excuse me, is that right?
- Brier:** I think Bob can recognize that.
- Allen:** Let's see when the letter was dated.
- Ethier:** I didn't see it or if you got a DEP in 2009, but I will check with Mr. Johnson from the DEP.
- Brier:** Okay because that is a typo error. Because they were there (294) 2010 and they inspected and they had no problem whatsoever.
- Ethier:** I would say that, is it fair to say that the Order to Correct that the date

dropped?

Brier: It is fair to say that that Order was written down as of yes, September 21st.

Ethier: But it is still an Order but the date is wrong.

Brier: It is still an Order. That is correct Bob.

Allen: So, have you stopped taking deliveries?

Brier: Yes.

Allen: I know that the shells are in these high mounds. Have you distributed them so that they are not as high on the property and leveled them out a little bit better?

Brier: You know, I could do that and I don't mind doing that. I don't mind moving them whatever way you think would reduce any odor whatsoever. Recently, what I did was, shortly after this, I decided to take the shells (314) ...In the report he speaks of the pile being high and them heating up. They don't heat up.

T. Gleason: Well, there is another issue, if you get new clam shells

Brier: The new clam shells are only new because they are wet. They don't dry them. So, I keep them, the ones that are still wet there and now what I have been doing is covering them with the old. Now, once I do that, in two days you don't The first day when I cover them, it is absolutely zero and there is zero there now. That's what I discovered after going down to the plant, talking with the gentleman who operates the cleaning belt. This is what he suggested and it is working perfectly. I invite you all down if you would like to, come down there with your noses and check it out because I am positive that you will see that there isn't any odor whatsoever.

Allen: How long do the shells stay on your property before they are crushed?

Brier: Well sometimes with 2000 yards, 3000 yards, but I got an engineer out there since and there is 75 hundred yards on the property. But they sometimes in the winter they sit there and they are covered with snow. In the summer time, come May, they are usually down to nothing because the Islands, they go from Maine to New Jersey, Martha's Vineyard, Nantucket, Cuttyhunk and all the various towns. Sometimes you are seeing 2 or 3 thousand yards being moved off the property.

T. Gleason: And how are those new, how do you receive those new shells? Are there body parts still on there, seaweed? How are they cleaned?

Brier: No. If you read the paper that I gave you from the Massachusetts State Rules and Regulations in that business, it states from juices, meat or anything else. No. That is a requirement with the inspectors.

T. Gleason: Who inspects them before you get them?

Brier: They have a State inspector in the house and I think it's a licensed 6th or a 7th, Bob can explain it.

T. Gleason: So those shells are always inspected by a State inspector before they get to you?

Brier: Yes, they are and they are always in that business. And every hourly they are checking the temperatures, the (344) cleanliness and there are

people on the meat line and everything in case they miss it and they go through twice.

Ethier: This photo here, when you dug into that with your front end loader, didn't Bob Johnson, myself and you think that that was a little bit, there is not meat on there but still a little bit dirty, not washed enough or more than (345), right? That's why we took that picture because it is really not representative of the rest of the piles.

Brier: I don't think the picture depicts the actual situation completely. We went into it.

Ethier: We detected that odor and we dug into it and the odor got stronger.

Brier: Yes, it was like he said, a number 2. If the nose goes from one to 5 that at first he said, I am right here now, it's a number one. But when we dug into it, like he said and he picks it up and he says, well that's more like a 2. Now, I don't know how offensive that is once it is 1400 feet away. A hundred feet away, he says he doesn't smell it hardly at all. On the pile we did. That is true. But we didn't smell it on the property line or somewhere else. But since then, what I have done at the suggestion of the plant engineer, was take the old stuff, which we have, which is like 50 - 50 and I have taken it and I have covered that right over. So, in a matter of days, any wet residue that's on that, dries right out. Matter of fact, it doesn't heat up or do anything. In the winter if it snows and we cover it over, come June or July if I dig in the pile, the snow is still there. So, it doesn't heat up. It is not like compost. If we would like to go down there and smell it at the time they have a complaint, and verify it. That's what I think we should do. I think that just sitting here and talking about this, makes them look bad, makes me look bad and I don't want them to look bad. I love the neighbors. If it means that I have to lower the pile and cover them up then I am all for that.

Ethier: And I think that is all we are trying to do here. These people have rights. I drove to that same building that you are talking about. I saw that there was a DEP file number, looked like a new house being built. All the people on the right side, which is the South side of Blackmore Pond Road made the complaints. I drove to their house. There was no noticeable odors at the time of that inspection. So, I drove into there with Mr. Johnson. We found an older gentleman working on a house. I believe it is the same one you just mentioned. I said to him, do you have any odor problems over here and he said, yes, right behind the house, coming from the direction of your recycling center. He says it smells like someone dumped off some rotting seafood. This was his words, not mine. I think it is also fair to say that the hot weather could have added to the migration of the odor from there. These people want nothing more from you and neither do we than to have you clean it up.

Brier: Oh, I know that and I didn't want anything bad. Times are hard and I am just trying to keep my family fed. Most important, I don't want to disturb people. I want them to like me. I know this is difficult for you

and it is difficult for me right now. I want to solve it. And I think if you will allow me to continue doing what I am doing over there, as far as the State, that's under my permit. They think I should be grinding up a few more stumps than I am. That has nothing to do with this. We have one disagreement when we put in here that he limited me to how many shells I can have on the property. But I don't have a permit telling me how many. That is number one. I expressed that to him. If the Board would give me a chance and if we could anytime from this day on, if that complaintant has that smell, 24 - 7, I will be there. I can't do any more than that to verify it. And if it is, I will take immediate action. I will cover it.

Allen:

Okay. Before we make a ruling. Any other comments?

Ethier:

This is important. I am glad you came in and I appreciate it because as the DEP stated to me, if he is in violation and can't correct the violation, the DEP will no longer issue the variance. And it is the jurisdiction of the Wareham Board of Health to not only oversee this but make sure any violations of the past and any new permits we have to issue, go over and uphold the regulations.

T. Gleason:

Permits for what?

Brier:

For my operation. My operation is what I do. I take in from the highway departments, Wareham, Marion and Carver, their brush and their logs and the stuff that they (454) from the highway from the storms. They come into my yard and it is a set up program where the towns don't pay for it. It goes to a SEMAS program that was set up years ago to benefit the town. And homeowners, if they want to get rid of their yard waste, they bring it in there. There is a small fee. The fee is priced on the fee it was 20 years ago when the Town of Marion did it. I adopted their same policy and their same price and that's what I do. It means a lot to me. If I disobeyed the rules of the State and I don't keep them happy, I can be They want me to grind more. The price of fuel is so high it is hard for me. But none the less, I still grind brush that comes in there because that is a fire hazard really.

T. Gleason:

So, the recommendation should be?

Ethier:

The recommendation should be from the Board to Mr. Brier, that he needs to commence grinding stumps. That's what the permit means. That's what he needs to do. I went there 4 years ago and he hasn't got anymore stumps ground than he had.

Brier:

Well, I have but everything that has come in, in the whole year, everything that came in my property was ground and some of the old. That's how I make my money, through the mulch and that mulch has all been sold. On the old stumps, been there since Hurricane Bob. They want me to do more. I just contracted a friend of mine from Carver, who is coming in to help me. I plan on doing that.

T. Gleason:

How do we verify that?

Brier:

The Town has a key. They can come in at any time they like.

Ethier:

We just say that we give him another 30 days to and I think it would be a

good suggestion to him from the Board to limit the size of the piles, to maybe make at least 2 piles and separate the old from the new and also to commence grinding stumps immediately. And every 14 days I will make a return inspection, perform an inspection there and at the end of 30 days we will re-evaluate and if you could come back before the Board then and tell us what the progress is and I could give them my reports.

Brier: That is acceptable with me. I have never had a problem with Bob entering the property or answering to anything he has ever called. And yes, he has called and yes, he has come down. And yes, the State has been in there. They were in there in May and said it was okay.

Allen: Is there anyone in the audience that would like to come up and say something?

Unk: My name is (509 Deborah) and I have some pictures of the property from 2001 – 2008. I moved in in 2004 and you can see how much. Seagulls will come around and fly around. I have shells that has been dropped off by seagulls in my yard. Seagulls don't pick up anything unless there is food attached to it. About 2 or 3 years ago I did make a complaint. I called the Marion (001 town hall). I thought it was Marion property. The person met me on my property and we walked through the snow. When we noticed the markings the person said, this is way over, they realized it was Wareham property. So, then I went to Wareham. And someone in the office decided to just give Mr. Brier my phone number, so he could call me directly, which was fine. What he did was, and he was very polite, he wanted me to hop in his truck and go to the shells. Well, I don't know this man. I am not going to go in his truck and go. No. I was very nervous. You could smell it in the air. And of course when you are around it, after a while you don't smell it. I could smell it. He couldn't smell it near my property. My neighbors smell it. I can't have company in the summer time on summer days because sometimes it gets so bad that we have to close the windows and go inside. Because the stink is so bad. I shouldn't have to do that on the hottest days of the summer.

Unk: So what about the person that stays 100 feet from it, they don't have a nose at all?

Unk: But he doesn't live there. He only works there.

Unk: But he is there every day. That's where he keeps his mowing equipment.

Allen: You definitely have an odor.

Unk: It depends on the wind direction. Weather conditions can change. You can't smell it in the Fall. It depends on the day and the breeze.

Unk: (Chelsea 022). You asked about the Fall. We get home around 9 – 9:30, 10 o'clock, it is definitely there. Maybe not every single day but the past two nights it was there. It is coming from that area. It is a shell smell. It is not salt water, low tide.

Allen: Thank you for your input. Yes, sir.

Unk: My name is (Robert Paris) and I live at 218 Blackmore Pond Road and I might be one of those 1200 yard guys. I have 4 sons. You can't stop kids from wandering around. They never get hassled. What you have is an inversion layer. I sell capacitors all around. I do a lot of the paper mills up north in Maine. The smell is usually in the morning and at night when there is no wind, especially if there is fog. But when the wind is blowing, you don't even notice it, I have to be honest. Any dark, dawn or dusk, that is when the smell is bad. I can't say at 2 o'clock in the afternoon is bad. But it is when there is not wind. It is an inversion layer. When it hits, it is not good. It smells like rotting meat. And I know it is rotting meat or else the seagulls are not going to be there. They are not going to be where there is nothing to eat. And that is another issue because they are there and then they decide to go over to our pond and then the poop is hitting cars and whatever. So, I would assume there is different kind of shells that you can buy. Some have more meat, some don't. Some are aged more. I don't know what your permits are. I would assume that if they have a lot of meat on them, they are cheaper and so

Briar: This is not that type of product that you are referring to. This is a product that has been cleaned, pre-processed, double washed and been rinsed again with chlorine. (Discussion of seagulls).

Allen: But we do have pictures that there are some debris on shells.

Briar: (010).

Unk: There is hundreds seagulls on this pile. So, I know what I know. I have seen them. They are there for a reason.

Briar: Well, you have seen them and I have seen you. My whole property is videoed with cameras. I will review a lot of it but I don't see them. I am sure they do. I have been in the field with Dougie Beaton and I have seen them all over the sand pile.

Unk: I guess my suggestion would be, if there is different grades of shells that you can buy, buy the better grade.

Briar: This is the best grade you will get in the Commonwealth. No one else has shells that are like this. For one, we get bad names because of people out of Rhode Island bringing theirs in with meat. These are free from that. The documentation you have there shows what they go through with the State inspectors.

Ethier: Well, I think it is fair to say, Madam Chairman, that when the DEP representative was there, we both saw shells that were not properly cleaned and he said he was going to address it.

Briar: Which I did.

Ethier: No, the DEP representative. He would address that and try to cut down but they are still saying there are odors there.

Unk: It was there this morning because there is fog. If there is fog, there is smell. Because that is when you have the inversion layer. When there is wind, I can't complain.

Allen: Thank you for your input.

Ethier: I would suggest to the Board that we hope that Mr. Brier reduce the size of the piles. Do not take any new shells in at this time, until I can talk to Mr. Johnson from the DEP and then commence grinding the shells.

Allen: Plus grinding the stumps.

Briar: That is going to hurt me tremendously if I can't take in shells right now. I have a contract and I can't go anywhere. It is going to bankrupt me.

Ethier: I didn't say forever. I just said until we can remediate the odor problem. You can cut down the piles. You have 75 hundred yards and you said
....

Briar: And (034) might go out this week.

Ethier: But you said to me at the time of the inspection with both me and the DEP representative, that if you didn't take shells for a while, it wouldn't be a problem.

Briar: (036 in the winter), when they are not running because of the storms. That is true.

T. Gleason: Well, if you want to say this is correct and say it is September 21st, 2010 and not 2009, you have an order to cease accepting new clam shells then.

Briar: What he is saying is based upon what he said. I am permitted for 75 hundred yards. He said that when they went there, there was 15 thousand. He didn't measure it, he said approximately. I took the time to measure it and it was around 75 hundred.

T. Gleason: It says, stop taking delivery of new clamshells.

Allen: No more new ones.

Briar: I understand that.

Irish: Who permits how many shells he can have?

Ethier: I believe it is under the State permit. It is not in our hands yet but it will be if the State decides he is not meeting the various requirements.

T. Gleason: All right then. Why don't we go along with what Bob just said.

Allen: We make a recommendation that you, the crushed shells that you have now, you can crush those. Do not accept any further shells until the DEP checks with the company supplying shells on improving cleaning of such shells. Limit the size of the piles to help eliminated the odor and to commence grinding stumps. May I have a second?

T. Gleason: I second.

Allen: Any further? In agreement?

C. Gleason: Agreement.

Briar: So what I am doing, if I may. You are leaving it up to the State DEP to determine when I can receive shells again?

T. Gleason: They are the ones who issued the order to stop taking it.

Briar: Well, I am going to get that cleared up.

T. Gleason: You know, if they are the ones who issued the order, they are the ones who should have to reverse it.

Briar: Well, they will.

Ethier: Well, under my order, under the Commonwealth of Massachusetts regulations, we can not allow him to take any more shells until the odor

issues are resolved or remediated. So, I will work closely with Mr. Brier. We need to eliminate these problems. We have proof here that people are experiencing these odors and it is just not fair if we don't do what we are supposed to do. If it pleases the Board, on Wednesday, November 17th is our next hearing and if he wants to appear then, I will have a report for you.

Allen: Okay. Thank you. So we will send Mr. Brier a letter. Okay. We are way behind time here.

1067 Main Street – McKinnon & Keese, Variance to Local Regulations – Upgrade Variance Granted

Keese: My name is Sandy Keese of McKinnon & Keese of Rochester and I have before you a request for a variance in order to upgrade a septic system located at 1067 Main Street. It is adjacent to Tremont Pond. We designed the system here for a 4 bedroom according to Wareham codes. We meet all of Wareham codes and all of Title V criteria. We were able to obtain 100 feet instead of the recommended 150 feet. We request that variance because we don't want to go any further into the tree line area there. We don't want to take down any of the 200 year old trees and thought it would be detrimental.

Ethier: So the variance you are asking for Sandy is what?

Keese: The 150 foot variance the Wareham Local code to the 100 foot that we have been able to provide.

Ethier: And we are not in either of the zone 2s in Wareham?

Keese: Nope. We are away from any public supply wells.

Ethier: It is a 2 bedroom?

Keese: It is a 3 bedroom being designed for a 4.

Ethier: And this involves that 150 foot regulation to an environmentally sensitive area. So, I suggest that we grant the variance because they have met those requirements.

T. Gleason: Okay. I would move that we grant the variance to McKinnon & Keese to local regulations on the upgrade on the property at 1067 Main Street.

Allen: I second it.

C. Gleason: I second it.

Allen: Proposal to Raise Title V Filing Fees

T. Gleason: Buzzards Bay Coalition

Ethier: If we could do the Buzzards Bay Coalition discussion. I think Conservation is coming in here soon.

Allen: I am just going to turn the tape off for a moment. Okay, we are back on tape. Before the Board now is the Buzzards Bay Coalition for discussion. Would you state your name please.

Ethier: I think that is the problem that we are having. Some of it has been very difficult and unobtainable. I had some conversations with (318) and with DEP and he agrees with going ahead right away but he also says that we have to come up with some type of a management plan as soon as that report comes out. We intend to do it with your help and with the DEPs help and some of the boards. We want to do that as soon as possible. We are frustrated in waiting for this report. We thought we would have something in place a long time ago. We appreciate your coming in.

Unk: I think if you wait for the report, Wareham's water is going to get a lot dirtier. I don't think the Town can wait. All we are trying to do here today is stop the new sources. I say, lets go.

Irish: Are there any other towns or someplace else in the country that has this bylaw?

Unk: Not Nitrogen Zero. You are also the first Nitrogen Zero permit with the Makepeace development.

Ethier: I think it is a good thing that Makepeace did and I am glad they did it in that part of town. I would love to see that happen here. My only concerns are, are those attainable with the Board of Health with our limited staff.

Allen: We would have to look into how much of a work load it would put on you and the Town.

Ethier: I think there is a lot to it and I am not sure where you would get an acre of cranberry bog or who would be the one to sell it to you. Who would determine the cost of an acre of cranberry bog or even if someone came in and said, I want to build 10 houses and that would trigger this part of the regulation and they couldn't find a cranberry bog, what would you do then?

Unk: The Bylaw asks the Board to recognize the problem and develop regulations to fix it. If we came in here and worked very closely with you, in 3 or 4 months, could you imagine being comfortable in bringing the bylaw in the Spring?

T. Gleason: I would say absolutely.

Irish: Now what other groups or departments or boards would be involved. It would be great to say you have to have the (412) of sewer but if the plants can't house all these extra tie ins. Are they attainable goals.

Unk: I think that if it does pass in the Fall, it still has to go to the Attorney General, you are still talking anywhere between 60 and 120 days before you would have to (443). So you could have up to 4 months, anywhere between 2 and 4 months that would allow that time to develop those things. As Mark said, cranberry bogs is not our primary source. We are not looking to take bogs off line. We are looking for other ways of doing it. So, even if you have just a broad base of options to start off. You would have the man power, the availability before you got it back from the AG and then you can always add to those.

Ethier: Usually if we vote in a regulation, it goes to the DEP. I don't think we

have to take it to the Attorney General's office.

Unk:

No. I am sorry. I should clarify. The bylaw.

Ethier:

If that is the consensus here and if we could basically with your help and with the DEP help and citizens and committees and boards, if we could effectively make a regulation that is a Net Nitrogen Zero regulation within 30 days, why is it necessary to go to Town Meeting to have this voted in when it is going to take 120 days for the Attorney General's okay? Why can't we just get it on with Board of Health regulations and make it a Nitrogen Net Zero regulation within 3 - 4 months.

Unk:

What is the matter with setting a bylaw?

Ethier:

Because if we get it before the 120 days and the Attorney General holds it up, we could probably just vote it in.

Unk:

(011). You can do a regulation at any time. Do the regulation now.

Ethier:

We would still have to do a study with committees and everyone's help.

Unk:

What I am saying is that if you have that, we could do it in a timeframe. You have those 2 - 4 months.

Ethier:

It is up to my Board but now we know what you have come up with, with your reports and your study. We all know that DEP is going to be on board. Whether or not we have that report, we are not going to wait for that report. We are going to take action, with the citizens and engineers in Town and DEPs help and the Coalitions' help, I think, I would suggest to the Board that it is an attainable goal.

Allen:

Anybody on the Board? Okay. We will meet again to set up a bylaw - regulations and hopefully within the next 60 days. People from the audience have any questions.

Brady:

I am Bob Brady and I, like most in the room here were part of this consensus process. In that I just want to understand, having listened to this discussion because we are being asked for this Fall's Town Meeting to adopt a bylaw. I would like to understand that we are all in agreement that this makes sense to not go forward with the proposed bylaw, when in fact, it is under the purview of the Board of Health relative to regulations. So, in that, is it fair to ask of the Clean Water Committee, are we going to withdraw that article for a bylaw and work to (042) to regulation, not a bylaw. Because I would like to understand if we are not in agreement that we are going to withdraw that article, then lets say Town Meeting approves that bylaw and we don't have a set of regulations on the books and the ability to enforce anything yet, what happens meanwhile. What have we effectively accomplished? I would hate to see us shoot our own selves in the foot because we haven't gone through the process as we consented to. We did not consent to a bylaw. We consented to working together with Planning, Board of Health and formulating, working together with the Coalition, and formulating regulations. Because we all agree that we want to clean it up. So, I want to have that understanding and I want it on the record because I don't want to go to Town Meeting next week and continuing thereafter, wrestling with bylaws versus regulations. So, can we have that

discussion and hope to iron it out right here, right now. Everybody in this room, I think, has participated in this consensus action plan. So, lets call it what it is. Lets not pretend we are going one way and then next week we are going another way. I think it is fair that that article gets withdrawn. It should not be appearing as a bylaw. It should be presented as regulations with this Board right here, together with Planning, Conservation and Zoning, etc. I think everybody needs to be on the same page. Is that fair?

Unk: We can't go forward with a bylaw that is bucking the will of the Town. And then the Board of Health, in 3 years from now or 5 years from now we might have a Board of Health that says, you know (067). With a Net Zero bylaw that can't be done.

Brady: Relative to the effort I put forth, that is attending 6 plus months worth of meetings, we did not consent to adopting bylaws. We consented to working together to formulate regulations, together with the Board of Health, the Planning Board and all the stake holders. We have a bylaw proposal for Town Meeting that didn't do any of that and we are passing it off as a consent. And I want to go on record to say that I don't believe that is the discussion we had and I don't believe that the signatures we all consented to and by all means, please take other input other than mine.

Pasavich: My name is (077) (Pasavich) and I was before you, Chairman of the Clean Water Committee. First of all, with regards to the consensus meeting which we attended and this is right out of the document itself, "therefore we agree we will work toward presentation of bylaws and regulations relating to this goal by Fall of 2010." That is the one you signed. The change was, it was added with Fall 2010, Spring 2010, not part of the original draft.

Allen: I have one of the older ones here.

Pasavich: Well, this is the one we signed and that is the documentation. We totally agree with what (Mark) said, that we would be happy to work with you to draw up the regulations to enforce this particular bylaw once it is established. I just wanted to give you an update. The Board of Selectmen voted in favor of this. The Planning Board voted in favor of this. The Conservation Commission voted unanimously in favor of this. Marine Resources Commission voted unanimously in favor of this bylaw and the Clean Water Committee voted unanimously in favor of this bylaw. What this bylaw does, is just sets a standard. We understand that the regulations are under your purview. That's why they are not included in the bylaw because that is up to the Board of Health to establish. We have been waiting a long time and as a member of the Planning Board said, "we have got to get the ball rolling now". And that is what we appreciate, the Board of Health giving their support towards this bylaw, so that we can move forward and get things rolling.

Allen: Thank you for your input.

Ethier: It is not like we have been doing nothing in the Town.

Unk: (129).

Unk: Madam Chairman, members of the Board, I too attended a number of the sessions we had, the last group when we met from January to June. It took 6 months to draft what you have before you. In about an hour's time the Planning Board on Monday night voted to approve a bylaw that they were seeing for the first time. I too along with Bob Brady, feel that this is putting the cart before the horse. There has been very little discussion with members of the Town's Boards, such as yourself, to know what some of the implications may be for what is being proposed under the bylaw. One of the things that is in that bylaw is that any development over 10 house lots is forced to go to Nitrogen Zero. I don't think the DEP has changed its tune with respect to a single family subdivision and that they don't recognize the common treatment plant for individual house lots. They do if the project is under a condominium type of ownership. (Further discussion of condominiums). I just feel that we are doing the same thing that we have done four times before, without having sufficient discussion and placing a document which basically gives you some guidelines and at least starts you thinking, and all of a sudden (159). I am fully in favor of the bylaw. I think it might have to be a Zoning bylaw because it does affect zoning. I would like this Board to take a step back and I would like the Town to take a step back and I intend to stand on Town Meeting floor again.

Allen: We will take it under advisement. I know that there is Town Meeting on Monday.

Ethier: If it pleases the Board, I would suggest that we put within next month, probably won't be a regular scheduled meeting, but I think we should have an extra one for a month to work on these, invite everybody and call that a Nitrogen meeting to develop bylaws. We will go ahead with our own regulations immediately.

T. Gleason: If we agree to that and we make a motion to that effect, does that mean that we do not support what is going before the Town Meeting?

Ethier: I think there is some more information than we had last time. I don't think there is any concern that the Board is not going to make that commitment, to have a bylaw within that (208) months. I think we should work on that monthly.

Allen: So, I think that what we have decided is that we are going to have monthly meetings and make up regulations for the Nitrogen Zero. I have no idea about the Town bylaw.

T. Gleason: I am thoroughly in favor of proceeding with making regulations because that is something we are going to have to do in any event. I would move that the Board of Health proceed with making regulations relative to the Nitrogen Zero in Wareham with monthly meetings with affiliated groups interested in the Net Zero Project.

Irish: I second the Motion.

Allen: Thank you very much.

Irish: I make a Motion to adjourn.

Allen:

I second the Motion.

Prepared by: J. Reed
Date: November 9, 2010

Signed and dated: _____

Diane E. Allen, R. N., Chairman *Diane E. Allen*

Charles S. Gleason, M.D., Member _____

Thomas L. Gleason, M. D., Associate Member _____

Lisa T. Irish, Associate Member _____

