



**Town of Wareham
Board of Health**

**Meeting Minutes
October 5, 2011**

Members Present:

**Lisa T. Irish, Member
Glenn Monteiro, Member
Robert Brady, Assoc. Member
Frank DeFelice, Assoc. Member**

**Ellen Begley, Liaison
Walter Cruz, Selectman
Robert Ethier, Health Agent**

Irish: Meeting opened by Chairperson Irish on October 5, 2011 at 4:17P.M.
Ethier: Madam Chairman, if I may. We have kind of an emergency here. I would like to take the 4:00P.M. hearing and move to new business. We have a person in the audience whose child is sick. There is an issue with the electric company. I have a packet for the Board to look at briefly just saying that the child does have an ailment that requires electricity and it has to be faxed from our office within the next ten minutes before they close. I did talk to the physician yesterday. It is in fact the case and then the letter explains the rest. Thank you. We will get that faxed right over there.

Irish: 4:00 P.M. Hearing – Approving signed minutes of September 7, 2011.

4:05 P.M. Hearing – Cape Cod Tobacco – Bob Collette – Restricting the Sales of Tobacco

Collette: Thank you Madam Chairman and members of the Board. My name is Bob Collette. I am the Director of the Cape Cod Regional Tobacco Control Program. I have with me Doctor [?], Mister D. J. Rosen, Control Director for the Mass Municipal Association. We approached the Board back in the Spring and suggested some changes to the existing [?] regulations. They have been in effect since 2006. There have been several involvements since that time that would warrant some minor changes and amendments to the existing regulations. Most notably, a ban on tobacco sales in pharmacies and placing a limit on or a cap on the number of tobacco permits that are issued by the Town. And those are the most important changes that we ask. We have provided in the draft regulation that we have given to you back two weeks ago when we were here and we did have our pre discussion about changes that are proposed to them and we are

here again to see if there are any questions. I know there are new members and so forth.

Further discussion with the Board and members of the audience as well as the members of the Cape Cod Tobacco Control Program regarding other cities and towns adopting this policy, new businesses, no immediate denials, enforcement issues,

Ethier: Madam Chairman, I think the gentlemen from Cape Cod Tobacco are here also to find out when the Board would like to hold a public hearing. So, the Board would have to decide if they wanted to do it now or schedule a public hearing. Madam Chairman, would you like to set a date? But we need some time to make sure the regulation gets in for January 1st, 2012. Would that be enough time?

Irish: Could you try for November 30th and let us know? Thank you.

4:10 P.M. – Onset Village Market – State and Federal Food Code Violation

\$200 Fine, Two remaining employees required to take the Serve Safe Class, Continuous Rotation of Stock. Unanimous

Ethier: Madam Chairman, members of the Board, members of the Board of Selectmen, members of the audience, Onset Village Market, we had performed an inspection on the 12th of September. Dave went in as a result of a complaint where an adult Robitussin Cough Syrup was out of date. Dave went in and found outdated boneless bar b que pork chops in the cooler. I believe he says here that there was also some ground beef that was out of date.

Mr. Ethier gives background on past violations and fines and continued violations for outdated food products.

Ethier: In this case the food protection program personnel in Boston agreed with me that it was definitely a violation of CMR 105.590, which is the State Food Code and that this is the 4th violation and that violation should be accompanied by a fine of \$400.00 and if it happens again, then the Board could reject their license or hold their license to operate a food market.

Owner: I took over in 2010 and this is my second violation. I had to fire that guy. I hired a new guy. So, we are going to keep everything nice and clean and I think I don't want to see anything out of code on the shelf.

Monteiro: One of the classes in the Serve Safe is what we are talking about now. So, you should be aware of rotating your food and checking your fresh foods and vegetables and meat as often as possible. The owner before you had the same problem. You said they paid the fine?

Owner: We put in almost 30 hours a week just checking all the foods. And we especially hired a person to check all the foods.

Irish: If we do a 4th violation and let's just say hypothetically there is a 5th violation, the recommendation from the State was that we reject their license? What does that mean? Is that permanent?

Ethier: I believe what is applicable here would be a \$500 fine and a suspension of

the license for 30 days.

Monteiro: Would that license for all food products Bob, or it wouldn't affect anything else in the store, like people going in there for the lottery?

Ethier: I think the store would be penalized and closed.

Monteiro: Okay.

Ethier: I understand Mister Monteiro what you are getting at. Like sometimes we remove cigarettes from the shelf and that allows it to stay open but in this case I could run this by them but I think that is what they intended.

DeFelice: Two questions. Over the period of time, this was the 4th violation. What period of time did those violations occur? And I do agree that after the 5th one, they should shut it down for the month anyway.

Irish: The Robitussin and the pork.

Ethier: In the past, at previous Boards, we have gone into CVSs, grocery stores and checked all the dates and that is under our purview. The education as far as food goes, that comes under the Serve Safe Certificate and if it pleases the Board, Madam Chairman, if you would like to request that all the employees be trained in Serve Safe, maybe that would be a good thing.

Irish: And I agree with Miser Brady and others that I think it would be a disservice to the village of Onset if this market were closed down for thirty days or weeks, whatever. So, the Serve Safe, how often does the manager have to go through the training and be certified.

Monteiro: Well, you have a Serve Safe and I know the young lady that is with you has one too. I would suggest maybe a couple more, at least. I would suggest before you ring it up, look at the dates on the package, no matter what it is. Then you don't have to worry about them bringing it back or calling the Board of Health that they have an outdated product.

Brady: It is kind of late at that point. They should be doing it better

Montriuro: I understand but in case one gets through.

Irish: Do you have any questions or Motions?

DeFelice: If you want to make a Motion, your suggesting that we probably should give them a fine of \$400.

Ethier: Madam Chairman, if it pleases the Board, if they want to waive I know the Serve Safe Certificate and the class is a hundred and something dollars now and if they wish to waive some of the fine and put that towards training of personnel, that might be a solution.

Irish: Now, how many personnel do you have on staff now with the exception of you two?

Owner: Four.

Brady: Four more other than the two of you?

Irish: And you have your Serve Safe?

Brady: So, there is only one employee that does not have the certificate?

Ethier: Two more.

Irish: I like Mister Monteiro's also as a back up plan at least for the time being until there is a different process for checking what is in the refrigerators and the shelves. That even though they are cashiers that they are backing up the process you have. I make a Motion that we fine them for a 4th

violation of \$200 and require that the two employees, whether they are stock people or cashiers, also are required to do the Serve Safe and present the certificate.

Monteiro: Well, I make a Motion that we pay the fine and take the Serve Safe class and also have the people rotate their stock as often as you possibly can. And as far as Serve Safe, Bob, now, they come to the office to you and give them names and addresses of the people who train, like Ron.

Ethier: We will make sure we set them up, Mister Monteiro as soon as possible.

Irish: So was that the \$200 or the \$400 fine?

Monteiro: \$200.

Irish: I second. Any discussion.

DeFelice: Are you going to be given the names of the people who go do it?

Ethier: Right.

Irish: All in favor? Aye. Aye. Thank you.

4:15p.m. – County Road Recycling – Mister Victor Brier – Complaint

Ethier: After receiving complaints from the neighbors on Blackmore Pond Road about the odors that come from 260 County Road, which is the sea shell, I guess you would call it a stockpile of sea shells for landscape purposes. We have in the past addressed this with the Board, the DEP, Bob Johnson from the DEP, who was in charge this, they originally permitted this operation. We have recently had these complaints that on Thursdays or Fridays, they are most prevalent of Fridays. The neighbors call and say, I think he has moved the pile. I think he is taking too much in. This is all speculation and conjecture but I do receive the calls on Fridays. So, some of the people involved have suggested to me that whatever he does, he does on Friday. Further discussion with Mister Brier as to his processes and attempts to address complaints.

Brier: I came up with a design to try to make this livable, better than it was the last meeting we had. At that time, I was told that there was a complaint and I was invited to go down there and witness this myself, the odor or whatever. We do a little different operation now. And what happens is, each load that comes in, each and every load, as soon as it is unloaded, it is covered. And you can walk to my [?] and I would say, within fifty feet of that and not get an odor. Now, there is no time. It is every day. And it is not every day that you smell anything. I am not sure what they smell. I have done everything I should do.

DeFelice: The reason why I am stopping you right there is because I think everybody should understand, you are only talking about one thing, is that correct? The seashells?

Brier: Seashells. It was 104 degrees temperature there.

Ethier: The issue to answer your question Madam Chairman, is yes, it is the odors from the pile of shells. When I pull in there with my truck, I washed my truck twice and that smell was on the truck for at least a week. It wouldn't go away. It is the smell of rotting seafood.

Brier: I don't get that. I hear what you are saying that but....

Ethier: Well I drove off the road and drove in to the pile.

Brier: I have brought many people in there and they are not coming up with that at all. I have even had some children in there and I asked one particular child, and he said, the ocean, Mister Brier. There is an ocean smell to shells. Now, here is the problem. Shells have a terrible smell because they have meat and juices. That is no longer part of it. And I do not have that. That does not come to my property.

DeFelice: Well if every day, why aren't there numerous complaints? I must say, I went there. I really didn't smell too much. Just a sea odor and it was actually my grandkids that actually smelled it. I did smell something. That is a brackish river. It comes in and it comes out and I have been down there numerous times. I went there yesterday on my own. The tide was down, like two feet and there was a smell from there. Is anybody here that lives there that has a complaint? If it was that bad, why aren't they here?

Irish: They are.

Brady: How old are those complaints that we are here discussing?

Ethier: They are ongoing from a year ago.

Brady: I remember that he was before the Board about that long ago but since then how often....

Ethier: I would say I have taken 4 complaints in total in October to last month. And it is always on a Friday before a weekend. I can tell you this. When I was with the state, he did dig into the pile where the freshest odors come from. That is the most recently dropped shells and it is putrid. So, I invite the Board to go there.

Brady: Well, I was going to ask, you are talking about the magnitude of shells you are moving all over the eastern seaboard. I am curious to know, are you moving a whole lot more shells on a Friday than you are on a Monday or a Tuesday?

Brier: No. Absolutely not. I close my day at 4 o'clock on Friday. No. Friday is not a busy day. My busiest days are Monday and Tuesday.

Brady: So, the landscape companies are not coming in on Friday to gear up for their weekend work?

Brier: I don't have landscape companies.

Monteiro: Victor, how do they come in in the first place? They come in sealed in a container on big sealed truck?

Brier: They come in an aluminum tractor trailer.

Monteiro: And it is not leaking underneath the truck?

Brier: No.

Monteiro: And where do they come from?

Brier: They come from New Bedford. I think if you look in your files, I supplied you with all kinds of information, explains the double wash, pre-crushed, chlorinated one part per million. I even make sure that when the man gets out of his truck and dumps that load, he does a physical look. He looks all around that load to see if any thing is dirty or not acceptable. Because I can not afford to keep coming in here and taking off the things I am doing.

I want to make things right as well. I think what I have done in the last year, is pretty good.

DeFelice: I mean you know, there are detectors aren't there?

Ethier: Yes, there are. The State didn't have one at the time and neither do I. I suggest and at that point when he asked me on a scale of 1 to 10 how bad do you think this is, we both agreed that it was awful.

DeFelice: The only thing, the reason I say this is because that is brackish water that comes in and out right behind these people's house that stretches between his property and where the people are complaining. There is a pond there that flows out and flows in to the ocean.

Brier: We are getting ready to shift the piles around now. I think I am doing the best I can. I have asked advice from a lot of people.

Irish: Now, I know the State required that he grind the stumps and move some piles and limit the piles. Do we have the same purview with the shells? I mean, I really do not want to impact your business.

Ethier: If this continues, the DEP will pull the permit that they have issued to Mister Brier. In that case it resorts to the Board of Health. It is now our problem. So, we are just trying to help Mister Brier through this and so far he has complied with everything. If I may, Madam Chairman, suggest that maybe the size of the piles, which is up near the trees if you take the elevation of that.

Brier: I did cut that down. That is one of the main things that I did. I took that right down, 10 feet right off the top. I will lower it myself. But I still stand firm right now, that odor is not from me. I will do this to please the Board. But if he takes another complaint, I want to be there. I want someone else to be there to witness this as well. This is not fair to me.

Ethier: If I may suggest, Madam Chairman, that he cut the piles down a little bit more and widen it out.

Brier: I can do that. We will see what happens.

4:20p.m. – Pig Regulations – Discussion

Ethier: This will be quick Madam Chairman. This is just something that came up as a result of an investigation that I did at the suggestion of the Selectmen. We had a pig on a property that belongs to the Town. Since then we have had complaints that there are other pigs on other property. This regulation was written a long time ago. I went out with Animal Control about three weeks ago. There is a pig in West Wareham. They have it in a cage. It is very smelly. It is typical of having pig animals like this. The people asked for an extension so that they could raise the pig until it was old enough to slaughter and that is this month. They called after that and said, we have five acres here, can't we just keep one to grow on our property and to eat it every year. And I said, you know what, the regulations indicate, no. We do not like it because the neighbors complained about the odor. But I think they were written because of the issues with odors, because of the issues with cleanliness and in this case, they are pretty far away from the

neighbors house and I think it was a neighbor dispute. However, it still is a problem for anybody that goes near it, you can smell it. So, I am just asking if the Board wants to uphold these regulations, write new regulations or entertain the thought that if you have so much property, they could have a pig on the property.

Monteiro: Wouldn't they be zoned as well before they have a pig on the property?

Ethier: That is a good question.

Irish: As of right now piggeries are not allowed in the Town of Wareham.

Brady: Unless we have a definition of piggeries, think we need to be concerned about how we act.

Ethier: I think under Board of Health Regulations, we have to say yes, or no. We have an issue with chickens. They are everywhere now.

Brady: I do not think one pig is a piggery but unless we have defined it, I just think we might have the cart before the horse before we start taking action against somebody. If they are not doing a very good job at keeping their animals, that is another issue in itself.

Irish: Any questions? All right.

4:25p.m. – Animal Control/Enforcement of Dogs on the Beach

Motion made to table discussion for further time.

Ethier: In the past, in the Board of Health under the State, Mass General Laws, you can appoint a deputy to the Board of Health. We have done that. I have educated some people from the treatment plant too. Abandoned septic systems properly when they witness the connection to sewer in the areas that are being sewerred. So, there is a deputy by virtue of that. Because of the new dogs on beach, a few years old now, is not being upheld by anybody. So, I talked to the police chief and he said that if you can get the Board to deputize the Animal Control Officer, he can give out tickets. The only thing is, at this time, he is not available. They are in between Animal Control officers. So, this thing can be tabled.

Brady: There are a lot of beach locations in the Town of Wareham that are ideal for walking a dog or dogs. I think we should look at the allowance, certain places, certain times for people to walk their dog. I would strongly encourage that we, the Board, re-visit that as a law if you will, and maybe condition it accordingly. Provided though that the waste gets cleaned up and dispensers are provided accordingly.

Irish: Mister Savageau?

Savageau: Bruce Savegeau for the record. I am president for the Swifts Beach Association. Dogs on the beach is a huge problem for our neighborhood. The real issue here is enforcement. We are going to ask to have the bike police officers and put them on the beaches and other areas where they can enforce issues.

Brady: Are we suggesting that police officers can not issue citations when someone violates the law like that.

Savageau: The only enforcement agent that I understand it locally is the Health Agent

and those he may deputize.
Pacevich: I recommend that the policy remains.
Irish: Can we maybe table this or continue this discussion? In early January maybe you can talk to the chief. I think it is a good idea. We can even move it forward once an Animal Control Officer is hired. But I think this should definitely stay agenda.
Monteiro: I make a Motion that we table the dog regulations until a further time that is suitable.
Irish: I second. All in favor.

4:30p.m. – Appointment of Chairperson

Lisa Irish appointed Chairperson

Irish: I have been acting as the interim Chairperson since Ms. Allen left the Board. I didn't know if we wanted to have a discussion to formally appoint a chairperson or to wait until the membership is fully appointed. I just wanted it up for at least discussion. A quick discussion.
Monteiro: I can make a Motion that we appoint you as Chairperson until the next.
Ethier: If I may make a comment. So, that would be my suggestion to the Board, if they want my opinion. That would be a good choice and you have done a great job so far.
Monteiro: I make a Motion that we accept Lisa as our Chairman for now.
Irish: I second.
Brady: Accept the nomination please.
Irish: Yes. At least for the remainder of this term.

4:35p.m. – Logistics of Public Hearing – Nitrogen, Tobacco

Irish: I wanted this on the agenda. I have never led a public hearing or participated. But I wanted to know from Bob or even anyone on the Board, Ms. Begley or Mister Cruz, how it is expected to be run. I assume Town Counsel will be here.
Ethier: It operates just like a regular meeting. It is just testimony from different people and pros and the cons and then the Board will take that into consideration and make their decision at another time.
[?] You open it as a public hearing. You poll the Board individually, then members of the Board. You announce that it is public and that you will accept public input for and against any issue. And then based on that discussion any vote after that is a matter of public record and is recorded at the Clerk's office. And then you close the hearing.
Brady: We have a draft proposed regulation. My guess is that anybody and everybody who is going to participate may not be privy to that draft. We might want to make that available for anybody to review, which might help expedite the process. It might require a second or a continuance of the public hearing, which would be announced that evening.

Brady: So, you can close the meeting, take any and all input under advisement. Have a follow up meeting, consider all that input, include more and come up with then a proposed regulation.

Ethier: I will make copies and they will be available at the Board of Health and perhaps post it on the web site.

**4:40p.m. – Doctor Gerald N. Unger, Board of Health
Member - Interview**

Irish: I guess if you could just tell us a little bit about yourself.

Unger: [?] I am retired. I am a physician with two law degrees. The reason I am doing this and volunteering for the Board is I see primarily [?]. We have been here for five years now and it is time to step in and help. I would like to help the kids with Type II diabetes. I think a little bit of initiative instead of the same old thing, might be appropriate. So, why am I thinking of doing this, other than being a loud mouth and doctor who has an opinion, it's because I live here.

Irish: Any questions?

Brady: What is your doctorate actually in?

Unger: Medicine.

Brady: And if I read this correctly, you received that from Mexico?

Unger: When I came back from the Marine Corps, I was not exactly on the affirmative action [?]. And I was a medical examiner for 24 years.

Brady: So, your license is in Mexico?

Unger: No, my license is in New York.

Brady: And you are also a lawyer?

Unger: I actually served as a mediator more than a lawyer.

Irish: So, you are semi retired?

Unger: I am supposed to be semi retired.

Irish: So, now your availability, do you think that would be, we are the first and third Wednesday.

Unger: It shouldn't be a problem.

Monteiro: Do you have an office here?

Unger: Right where Abbie Glass is.

Irish: Are you fully up to date and I guess immersed in still a lot of the medical.

DeFelice: So, you have been following the politics of the Town.

Unger: It is interesting to follow the politics of the Town.

Brady: In your five years in Wareham, are you familiar with Mass General Laws regarding the Boards of Health, Chapter 111?

Unger: I read it but not immersed myself in it.

Brady: How about nitrogen? That is probably the first and foremost item on our agenda. Are you familiar with nitrogen and nitrogen loading?

Unger: It is not something that I would come in contact with. Yes, I have read about it but I didn't pay attention because it didn't affect me.

Irish: Have you gone before the Board of Selectmen?

Unger: No.

Irish: One of the questions that they have asked in the past is if you have attended at least 3 Board of Health meetings.

Brady: A case where you are representing a client against the Town of Wareham?

Unger: No.

Brady: Okay. So, this was a case, a situation where you condemned a piece of property?

Unger: It wasn't a matter of being condemned. It was a matter that certain things had to be done and it was a matter of educating one party and just working with it until he got off his touché and did what he was supposed to.

Ethier: It was a condemnation, an order to correct and an order to vacate.

Brady: So, has that been resolved?

Ethier: My last conversations with Doctor Unger was that he was going to bring a trailer in there. I don't know if we could discuss this at this time.

Brady: I just wanted to establish the relationship.

Irish: I think this is the full membership interview process has reopened once again. So, I am not sure of our time line. We are going to reach out to other citizens who have applied. So, okay. Thank you.

Unger: Thank you.

4:40p.m. – Old business.

Irish: I do have a question for the Selectmen that are here. So, we can open the interviews out for full membership for the people that have already applied?

DeFelice: This is for full membership.

Irish: Are we required to have a full medical professional and if we are does it have to be an M.D. or can it be nurse practitioner, physician assistant.

Brady: Mrs. Begley read correctly into the record two weeks ago that that is relative to a city. In a town form of government that encourages that we have a medical representative, be it a doctor, nurse, but the law does not mandate.

Cruz: I got a verbal.

Brady: So, we do not need a doctor. Do you agree?

Irish: I would love to have a medical professional as well but I do not want to be pigeonholed. I know Mister Mulkern has expressed interest in being re interviewed for the position. We are not required.

Cruz: No.

Irish: My understanding it was part of the discussion. It was not an official guideline or policy written up. I think the discussion points were, recommended by the Board, attend three meetings, interviewed by....

Brady: Let me read the minutes of September of 2010. The selectmen

present had a lengthy discussion regarding member appointments. It was recommended by the Board that (1) applicants should attend at least three meetings of the Board or Boards that they are applying for (2) recommendations from said Board, Committee, or Commission be made to the Appointing Authority and (3) the applicant must appear before the Board of Selectmen which is held on the 3rd Tuesday of the month. That seems to be the criteria or recommendation. Are these recommendations being followed by the Appointing Authority?

Cruz: It is a recommendation only, not policy.

Irish: I would like at least to follow the recommendations so that our bases are covered. So, we are going to interview. We will put forth a recommendation to the Appointing Authority. So, maybe if we can put Mister Mulkern on our November agenda. Before I forget, Health Agent's Report?

Ethier: Health Agent's Report. I have set up some training for the police, fire, EMS, myself and the Harbor Master. It is all under a certain training approved at the Center For Disaster Preparedness in Alabama like we attended last year. I talked with the representatives FEMA yesterday and there is a couple courses, training for disaster preparedness, use of meters and whatever to prepare for all types of biological and different types terrorism. So, I am going to talk to the other departments to see if they are interested this year and we will set that up for some time in November or December. The other thing is MHAD training. That is for Board of Health members. That is a great course. If anybody wants to attend, that is in November. We have a Flu clinic at the end of this week.

Chapter II – 11

Perc Tests – 3

Title V Inspections performed – 21

Garbage and Nuisance – 10

Food Service – 3

Irish: Do we have a Motion to adjourn?

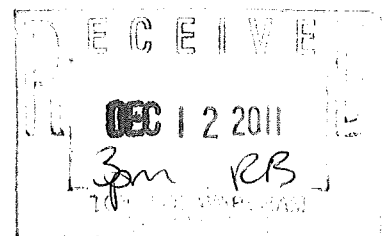
Monteiro: I make a Motion to Adjourn at 6:27p.m.

Irish: I second. Meeting is adjourned at 6:27, October 5th.

Prepared by: J. Reed

Date: October 14, 2011

Signed and dated: _____



Lisa T. Irish, Chairperson

Glenn Monteiro, Member

