



**Town of Wareham
Board of Health**

**Meeting Minutes
June 15, 2011**

Present:

**Diane Allen, Chairman
Dr. Thomas Gleason, Member
Lisa T. Irish, Member**

**Ellen Begley – Liaison
Chairman of Selectmen, Mister Cruz
Robert M. Ethier – Health Agent**

**Meeting opened by Chairman Allen.
Draft Regulations Hearing**

Allen: Before we start, today what we are going to do is: we as a group looked at the regulations that were put forth to us by the Buzzards Bay Coalition and also the Wastewater Committee, Clean Water Committee. Both of them we found to be very similar and between both of them we have come up with this one regulation here. Tonight we are going to go through section by section to see if there is anything we want to add or subtract. If anyone has any input into each section, we will gladly hear your expertise please.

Last week at our meeting, we came up with a figure. It is different from what each group had wanted but we felt that this was figured for the nitrogen as 12. We felt that to start off with that that would be a good figure. As time goes on, we feel that if the companies that put in the system, that put in the systems can do a better job with getting less than 12 consistently, then we will re-look it and maybe decrease it or increase it, whichever we will do. As for now, we are going to go with the 12. We also wanted to add any failed system to the regulation. So, Lisa is going to go and start with number

Irish: Okay. So, I will read the section and then we will discuss it from there?

Allen: Sure.

Irish: Okay. 1.0 – Purpose – The purpose of this regulation is to protect and restore the coastal water quality in the Town of Wareham from the impact of nitrogen pollution by minimizing nitrogen generated from residential and commercial waste water.

Allen: I am fine with that. If you could state your name for the record please.

Parker: Joe Parker. I am the director of the Buzzards Bay National Estuary Program. Later on the regulations part about lawns and storm

water. [026]. Certain things should be eliminated from And perhaps into a separate regulation. But the title should reflect what you keep in here and also the purpose. Right now the purpose just talks about waste water and the title talks about waste water. So, if you still have any of those elements down there, the title and purpose should reflect whether or not you are going to have anything on lawns or on the storm water.

Allen: Okay.

Gleason: So, basically limited to new development and upgrades of failed septic systems. That should be in that statement?

Parker: Well, all I am saying is, the [032] talks about limiting [033] from lawns and from storm [034] and if any element of that is kept in, that should be added to the purpose. Right now the purpose says that you are only trying to control waste water, nothing about lawns or storm water. And again, I would support just having it on waste water and I will explain my comments later on. But you have the lawns and storm water, they should be in the purpose and in the title.

Pacevich: If I may, Eddie Pacevich, Clean Water Committee. Joe kind of stole my thunder. That is exactly what I thought also. And the way I put it, the purpose of this regulation is to help protect water quality by limiting new nitrogen discharges to surface and ground water contributing to nitrogen pollution. That way you are talking about not only septic systems but lawns and waste water, if you keep them in there. I would think possibly you might keep lawns but the storm water I think might be taken out. But if you have to, what you did in the previous years was limit it only to septic systems and we addressed more than just septic systems in the regulations and in the title also. Nitrogen pollution, nitrogen loading any of that kind of terminology versus just limiting to waste water.

Allen: Okay. Thank you.

Irish: 2.0 – Authorities – This regulation is adopted by the Board of Health of the Town of Wareham, Massachusetts, acting under the authority of Chapter 111, Section 31 and Chapter 21A, Section 13 of the Massachusetts General Laws and under Title I and Title V of the State Environmental Code, [047] CMR, 11.00 and 16.00.

Gleason: No comments.

Parker: This obviously has to be run by Town Council. I just want to point out that some other boards have had some more expansive language, kind of filled in or additional phrases and I have some pamphlets from like Westport Board of Health and Plainville. And again, I would defer to Town Council but sometimes the language is broad and just to cite all possible authorities and again, that would be for the Town Council to address.

Allen: Okay.

Ethier: Could you provide us with that information?

Parker: I have [053].

Ethier: Oh, great and I will furnish it to Town Council.

Parker: Exactly.

Allen: Thank you.

Parker: And again, I sometimes see sentences like, Board of Health Regulations, (exercises the power), under which the various levels of government are responsible for testing for the public health, safety, welfare and environment. [056]. See some links to examples on the Massachusetts Association of Health, which we would want to [056]. I will provide that.

Allen: Thank you.

Irish: 3.0 – Definitions – For the purposes of this regulation the following term shall mean, alternative system, a Massachusetts Department of Environmental Protection approved system designed to provide or enhance the removal of nitrogen, an on-site sewage disposal.

3.2 – New Development – Any new structure that requires approvable of a disposal system construction permit from the Board of Health.

Pacevich: We had a different definition for new development, which we did put in here. We both used different ones because we were not including failed or upgraded systems. Now that we are including failed and upgraded systems, I would just suggest that we ought to take the definition for new development right out of Title V. In which case, it would be called New Construction. And this is what Mister Churchill at a previous meeting, there was some talk and confusion between new construction under Title V and new development under these regulations. Under the old adopted regulations where you were just considering what your definition of new development was and it did not include upgrades, that was fine. But if you are going to include upgrades, then it would be just as easy to adopt new construction and to read a key to what Title V says. You can just say, instead of saying new development definition is to call it new construction and say it is synonymous with new construction pursuant to 310CMR15.02. And I will just read that section. [Reads section]. I would say that if you use new construction in the same way that is under 310 or CMR, that is where the confusion between the engineers and the [076].

Irish: And then we wouldn't need 3.5 upgrade?

Parker: And then at 310CMR15.02 is the definition of new construction from Title V.

Irish: Do we need the 3.5 upgrade then, with the new definition?

Parker: Actually, you don't need the definition for upgrade because that is included in new construction. So you are eliminating any kind of confusion interpretation between your regulation and Title V.

Irish: Okay. So, 3.3 – Nitrogen Minimization – For the purposes of this regulation nitrogen minimization shall mean compliance with Section 6.0 of this regulation.

Ethier: I think that is self explanatory.

Allen: Right. They have to apply for the permits and so forth.

Irish: 3.4 – Lawns – Lawns shall include all maintained turf areas and excludes ornamental landscaping, agriculture fields, and home vegetable gardens.

Allen: Were we going to delete lawns?

Gleason: You had a comment on lawns?

Costa: The only thing is, later on you talk about top soil depth, bushes and trees, but that does not contradict this. You are just trying to provide a definition of lawns separate from those other activities in this Town.

Ethier: At this point Doctor Costa, would you want to

Costa: But then [093] it goes to the point of do we want to include lawns and again I wanted to wait for my comments. But my comments about lawns is this, if you want to get to that point right now. If you don't want to anything with lawns, you delete everything with lawns right now. As it is currently written, the only people that are going to comply with this regulation is someone installing a new septic system. So, when you get down to the lawn section, it talks about fertilizer application. I do not think the best strategy is totally to regulate what the people are fertilizing on those. [098]. So, I would argue against having any inclusion about fertilizer application. It is worth talking about. A lot of towns are requiring [099] fertilizer, time of year requirement that other jurisdictions are adopting. But they are all encompassing to all people in the community, not just the handful of people who come in for a permit.

Allen: But how do you regulate that?

Costa: That is a separate issue. That is a whole separate discussion. Now in talking to Mister Pacevich, this also means that when you are digging up a septic system, putting in a leach field, you are digging up the top soil to build a new thing and maybe that is the time to make sure they are putting appropriate topsoil back to minimize the need for water and fertilizer. So, I do not have an objection to any type specification on the design of the lawn, if you want to include it. So, my main issue is [get rid of the 105] fertilizer application, it's got to be very tough. There are a lot of issues on how you are going to implement any [107]. It is worth discussion at a later date. Pull that out. If you want to keep designing standards for what the depth of the top soil is. If you want to keep designing standards for the percent of organic matter is. You could keep that in here, in which case, your definition of lawn is appropriate. So again, [109] what you want to keep in, it would be easy just to pull everything out and put it under its own little by-law. Then you can have the [110]. If you decide to keep the back yard, ripping up the lawn, putting in a leach field or if you are planning a new house and you want to manage what kind of lawn goes back in, you could do it. There is no right or wrong answer on that. I would pull out the fertilizer application.

? It seems to me that you started out with a simple [112] and this seems to be convoluting everything. This was a lawn, just a definition and he seems to be going on and on.

Ethier: He said that he could address it later on. I was just anxious to have his comments. At that time, I can address it also. I think that when you are putting in a new septic system, you are only putting in a small

area, maybe 40 by 40. So, you are addressing something. ... This is going to be hard enough to enforce and to keep track of without having to go out there with a ruler in everybody's construction and make sure that they are 20 by 30 feet of grass

Pacevich:

Eddie Pacevich. I feel like the Mutt and Jeff team but I also agree totally. We discussed on several occasions and voted on several occasions the idea of using a slow release fertilizer or any type of restriction on fertilizer. The consensus of both previous meetings that we have had is that it is impossible to enforce. You can not enforce it. I tend to lean toward leaving the lawn in here is because where else is it going to be apparent or when you have control over the lawn. What can you tell me to do with my lawn. You can not tell me to do anything. But when there is new construction and they are starting to put in new lawns, that is when you have to opportunity to put in requirements for the depth of the top soil and also it allows you a limit on the side. [130]. Now the language we had in there applies too, if you are going to do a new septic system as Bob says, 40 by 40, okay, whatever your space is, this applies to your 40 by 40 space. But that is it. Because it says about removing top soil.

Allen:

Okay. Thank you.

Costa:

It is a little more complicated than is being addressed here.

Ethier:

I just think it would serve the Board and certainly in this case, a better purpose if we addressed a nitrogen fertilizer regulation later on, with a new construction limitation to the size of the lawns and whatever.

Irish:

So, we are going to delete 3.5? Is that what we already discussed?

Allen:

Yes.

Irish:

4.0 – Applicability – Except as provided for in Section 5.0, this regulation shall apply to upgrades and all new developments. We are going to change that to construction? All new construction in the Town of Wareham.

5.0 – Exemptions – This regulation does not apply to discharges requiring a State issued ground water discharge permit pursuant to 310CMR5.00.

Allen:

Go ahead.

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George [152] and I talked about having some compost [153], you would have an exemption at this point, where composting [toilet 154]. If you have that, the way it is constructed now, it would then exempt 1 any [155] of lawns and storm water. You could still keep them in. So, again, you have a construction issue. But if you throw out [storm water and lawns 156], and just focus on [site], then if someone is putting in a composting toilet, there is no more compliance issue.

Allen:

Thank you.

Irish:

6.0 – Nitrogen Minimization for New Development. So, New Construction?, in the Town of Wareham – The Board of Health shall not approve a disposal system construction permit unless the following

requirements have been satisfied.

6.1 – Application Requirements – All applications shall be for the use of an alternative system and be submitted to the Board of Health, which shall hold a hearing to consider their approval within 30 days. No abutter notification shall be required for this approval except as otherwise required. All applications for alternative systems shall be accompanied by a copy of the approval letter appropriate for the technology indicating the level of approval, general use, remedial use, provisional use, [?] use, or site specific pilot approval and a copy of the operation and maintenance agreement.

6.2 – Requirements on Plans – All alternative systems shall have sampling ports appropriate for obtaining a representative sample and that are easily accessible and secured from unauthorized tampering. The design plan incorporating the use of alternative systems shall contain a clear illustration of all sampling ports accompanied by an illustration and explanation for their use.

6.3 – Operating Permits – Upon issuance of a Certificate of Compliance, the Board of Health shall issue an Operating Permit with the following requirements.

6.3.1 – Permit Limit Requirements – All alternative systems shall be required to meet an annual average nitrogen effluent limit of 12 mgs per liter or less. The Board shall hold at least 1 public hearing every year to review whether this effluent limit is protective of water quality.

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The inclusion of that last sentence by the way, seems to be in the wrong place.

6.3.2 – Operation and Maintenance Agreement – At all times the permittee shall maintain and Operation and Maintenance Agreement.

6.3.2.1 – Such Operation and Maintenance Agreement shall include a provision requiring immediate corrective action and notification to the Board of Health within 7 days if the total nitrogen effluent limit pursuant to Section 6.3.1 of this regulation is violated.

6.3.2.2 – The permittee shall notify the Board of Health in writing within 7 days of any cancellation, expiration or other change in terms and or conditions of the Operation and Maintenance Agreement.

Allen:

Yes, sir.

Brady:

I would like to talk about

Allen:

Would you state your name please?

Brady:

Sure, Bob Brady. Could we talk about the 6, 3, 2, 1 for a minute. The word violated. We are assuming that we have acknowledged the system and expected it to meet a minimum standard because in 6, 3, 1 says – all alternative systems shall be required to meet, ending. Now, if this system has been approved by the Town of Wareham, the Board of Health to meet 12 parts per liter or 12mgs per liter and all of a sudden it is not

meeting true operation and maintenance and inspections. I am not effectively in violation but yet further in the proposed regulations, each violation is subject to a 300 dollar first and per day fine. But I have already been approved by a manufacturer and a system approved by this community but yet, if I do not meet 12 parts per million or 12 mgs per liter, I am in a new classification as a violator. I think you need to look at the word violated because you have so many that [?] that are already approved. I would caution words to that effect, especially if you are going to propose a fine at 300 dollars a day for the quote, unquote, violation. I just throw that out. Be careful with the words we use, especially if the system has been approved through the proper design, through the proper permitting process. I think that if the system [?], that does not necessarily suggest that I, as the owner of that system, the violator and therefore then I am subject to a fine. So, just a caution.

? I would like to comment on that. The system operator is responsible for the system. Owning that is responsible. He would be the violator. His alternative would be to go against the manufacturer.

Brady: At 300 dollars a day.

? Well, this is what you get into. They are not going to have any documentation that shows that alternative septic systems is getting 12 parts per million. You are going to have to take the word of the manufacturer. So, the other thing with 6.3.2.1, who shall notify the Board of Health within seven days if total nitrogen effluent limit pursuant to Section 3.1 of this regulation is violated. I would assume the system operator is the one who is doing it but it doesn't specify. You probably should include the system operator to that 6.3.2.1,

Allen: Okay.

Ethier: We could probably re-write this last sentence to say that if the system is not in compliance with this regulation

? Under the Operation and Maintenance Agreement, wouldn't it spell out who is responsible.

Gleason: It should.

? So, we are being a little bit redundant.

Churchill: Manufacturers that are presenting data if you will saying that they can meet the 12. But then they project that if the [?], if the agreement is in place, if they are not using a seasonal link. There are a lot of ifs.

Irish: We are looking at the average of quarterly reporting, right?

Gleason: Annual.

Irish: Annual average of the quarterly reporting and the number 12 that we came up was a little bit more of a cushion, I felt, because we felt based on what we had seen, that 10 was a reasonable number. Therefore we built in the cushion of 12. I don't know how we address how if somebody comes in with a 14 on their second report, then I guess they work with

Gleason: No. You can't do that. It has to be the annual average.

Irish: But we would know if they come up with a 14 on their second whatever. Then we can alert them and they could start working on it for their third and fourth report.

Gleason: But we have to work on a yearly basis.

Allen: We wouldn't fine them. Yes, Mr. Pacevich.

Pacevish: Eddie Pacevich. Absolutely you are doing this on a annual average. The other thing is that Mr. Churchill is correct except for Nitrex. Nitrex gets you 5 percent, 96 percent of the time.

Gleason: I would comment on that though. The information that we have is very limited. There is a very small sample. There is maybe 3 or 4 residences that are cited and the information that I have from the Cape down at Otis, they have only one system. Some of the information that you provided had only 1 or 2 private residences cited.

Pacevich: But the information we gave you regarding Cheasapeak Bay, that specifically stated 96 percent of the time you are going to get 5 percent.

Gleason: What is the size of their sample?

Pacevich: Who knows?

Gleason: That is the point.

Pacevich: We are talking about local, State, Towns. This is the Federal Government that you are going to get 96 percent of the time, 5 parts per million. You eliminate all of these issues.

Gleason: I also mentioned last week at the meeting, if you took all comers, only 70 percent of the time they met the requirement of 19, which meant that at least 30 percent of the time as John mentioned, they are not compliant. So, no system is perfect.

Irish: 6.3.2.3 – The Permittee shall be required to repair, replace, modify or take any other action as required by the Board of Health, if the Board of Health determines that the system is not capable of meeting the required reduction of nitrogen in the effluent.

6.3.3 – Monitoring Requirements

6.3.3.1 – The Board of Health may require monitoring of alternative systems that exceed monitoring specified in the approval letter issued by the Mass. D, E, P. At a minimum, the Board of Health shall require quarterly measurement of total nitrogen in the influent and the effluent for the first two years after permit approval. After two years and upon a finding of Compliance in Section 6.3.1, the Board may reduce such monitoring to twice a year, samples to be taken more than four months apart.

? I strongly discourage [?influent] monitoring. We did that at the septic system test center [?]. D, E, P doesn't require influent monitoring. It doesn't add anything meaningful to this. It is good research study.

Pacevich: It should only be effluent. Once you get into a general system there is no requirement.

Gleason: But we can require it.

Pacevich: But to get to general they went through piloting, they went through

provisional and now they are in general. Because they have gone through all this testing, they don't need any more testing.

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I don't know any system that doesn't require yearly.

Pacevich:

If it is provisional the State requires quarterly. But if it is general, it doesn't require anything. [?]. So if you maintain what is required by the permit and under general, require annual sampling and testing, I think you would be in a good situation and then after two years, you might want to get down to once every two years.

Gleason:

My point is that you are talking about a new system on a new lot that has not been tested previously in that situation. I think it is reasonable that they would have it done quarterly. Why not have the testing increased to begin with so you know where you stand along the line.

Pacevich:

All I am saying is you are putting a huge burden on the owner.

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The cost is about \$1600 a year for maintenance and quarterly. I don't believe that is a huge cost, number 1. But I agree wholeheartedly that it should be done quarterly for the first two years because you have to know what this system does.

Pacevich:

I have to agree with Mister Costa once on the influent and effluent. That definitely should be taken out.

Gleason:

I believe we should leave it at quarterly for the first two years.

Allen:

I agree. Go ahead.

Irish:

6.3.3.2 – All measurements and samples collected shall be collected, transported and stored in such a manner as outlined in the most recent edition of Standard Methods, the Examination of Water and Waste Water, American Public Health Association and the latest E, P, A Analytical Procedures.

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I was just going to say that there is a lot of stuff in the D. P. A. about handling and monitoring and using certified labs and so forth but I think upon that whenever you have an alternative system, I think maybe some of them came from the Town of Falmouth. A lot of stuff is already covered under the alternative permitting process. When you read anyone of these alternative permits you get from D. E. P., it is very rigorous in terms of monitoring and what laboratories and what the performance standards are.

Gleason:

From my point of view, I want to know what the certified labs are. So when we get information, we know where it is coming from.

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There is a whole section on who is allowed and who is testing for alternative. It goes beyond. Just to let you know.

Pacevich:

If you are in the business of monitoring the system, you are not going to take it to somebody who is not certified. That is up to

the Board.

Irish: I would keep it in as a backup.

Gleason: Leave it.

Allen: Okay.

Irish: 6.3.3.3 – The results of all such monitoring shall be subject to the requirements of Section 6.3.4.

6.3.4 – Reporting Requirements – Any person or entity that owns, operates, inspects or monitors an alternative system in Wareham shall cause the results of all monitoring and inspections to be submitted to the Board of Health in a format designated by the Health Agent. All reports regarding maintenance, monitoring or inspections shall be submitted within 30 days of the time when the maintenance, inspection or monitoring was initiated. An annual reporting fee of \$75.00 shall be required from each system owner. The fee shall be paid to the Board of Health, which will be used to defray the cost of oversight and enforcement.

Pacewich: I don't know if the requirement of 30 days is something you want in there because you mentioned monitoring and inspection but you did not mention lab results and I don't know how long it would take to run it through the lab and get the results out to you as part of the inspection and monitoring process, if you are going to have lab results involved.

? The only place I know of is the Barnstable lab and they ship out [?] and that takes over two weeks there. But the lab in Buzzards Bay and the one in Sandwich, you will probably get them in a couple of days. But like you just said, that is true. If you go through Barnstable County, it could take longer.

Pacewich: The other issue, the annual reporting fee of \$75.00 is required from each system owner. How about system operator, because they are the ones, you are charging them for having the capability, I assume you are going to implement this, [?] Joe here. And into that monitoring system where the license O and M individual is going to be reporting to you. So you put the charge in for the actual person who is doing the inspection or maintenance and upkeep of your internet system for reporting. What are we charging the system operator or owner for?

? [?] I know Barnstable County started off by charging \$25 and then they charged \$50 and now they are going to \$100. But it is paid by the person doing the maintenance and contract. The homeowner has nothing to do with that. They are paying for it anyway through the \$1400 to \$1600 anyway.

Allen: So that is part of their fees.

? Yes. You have it down as the system owner.

Pacewich: It says any person or entity that owns. Right near the bottom. Annual reporting fee shall be required from each owner or entity. – Responsible entity.

Gleason: So that would be the person doing the job.

Irish: So if we don't get the \$75.00, who do we go after? We are going to call the owner and they are going to say the company. We are going to call the company and they are going to say it is the owner.

Gleason: It is the company because the owner is paying the company.

Irish: So we should take out owner.

? Well, supposedly we have companies If the owner fails to renew, we don't have an agreement and therefore there is nothing in line. So the Board of Health has to write them a letter saying they don't have an O and M. And again, where we don't have an O and M, somebody has to pay the \$75.00 fee.

Gleason: System operator.

Allen: Okay.

Irish: 6.3.5 – Permit Limit Violation – If a violation of Section 6.3.1 should occur, a \$150 inspection fee shall be required from the permittee. The inspection fee shall be paid to the Board of Health, which will be used to defray the cost of an on-site inspection.

Allen: Okay.

? Is there any confusion in the Board's mind as to what the definitions of [?] average or annual average for that calendar year?

Irish: Calendar year divided by four.

? I was just looking at how you were going to interpret that. Would you be looking at the last four or a rolling average

Gleason: It would be yearly.

Pacewich: There have been write ups or recommendations, they refer to it as a rolling annual average. So in other words, on any given date like today, you would go back to June 15th, 2010. You could use that.

Irish: 6.3.6 – Notification - go ahead Mr. Brady.

Brady: Just a question back on 6.3.5. I am interested to understand why there would be the Health Agent required to go out and inspect if we have assessed that over the course of the year a system has failed. What is that inspection going to effectively do at \$150.00 other than possible waste time in getting the situation corrected? Because have we not already determined the system has not met the minimum standards of 12 that you are proposing? And so for \$150.00 and sending Bob Ethier in or his associate out to inspect the system, what are you going to gain by taking the time to do so? And why are we not then instead, because you have the data that says, you did not meet the standard. So what is the purpose of doing another inspection, when you already have the data that says it is not meeting the standard. Just to be clear on what you are trying to accomplish.

? I did not want to go to that but since Bob brought it up. I agree with that a hundred percent. You know what is wrong with it.

Allen: When you get the report.

Pacewich: What is he going to have to do, pull up all the covers and look at what?

Brady: You know the system in place and monitored as per this proposed regulation to operate and maintain together with inspections for monitoring information, after a year, the anniversary or however you roll the year, you still are going to determine a failed system. It does not meet the standards. So why are we re-inspecting when that owner of the system has already hired someone to monitor and report and to note that it failed, so why are we suggesting another inspection?

Allen: Would you do the inspection after you think the problem is solved?

Brady: Well, that might make good sense.

Pacewich: But again, now you are monitoring again. They have to take care of the problem and send in tests that it is working.

Allen: So, you wouldn't need anyone to come out.

Pacewich: You just take the next set of lab reports.

Brady: You have an Operation and Maintenance agreement and some guy has been hired to do that for you. You shouldn't have to be running out any time a system fails to do an inspection to determine, look we have another failed system.

Allen: Do you think we can eliminate that?

Irish: I think so and then I guess if we think there are a lot of visits for whatever reason, we can re-visit.

Allen: Okay. So, we will just delete 6.3.5.

Irish: So, 6.3.6 will become 6.3.5.

The new 6.3.5. is Notification of the Registry of Deeds – No Operating Permit shall be issued until the applicant has filed with the deed for the property a notice indicating the presence of an alternative system, monitoring and reporting requirements and the requirements for a service contract for the licensed system and presented a copy of such filing to the Board of Health.

? I have a question on the [?]. We are issuing an operating permit but they have to have it registered with the county deeds. I am unsure what the sequence. You put something on the deed after it is constructed?

Irish: In the order in the operating permit.

Pacewich: This is something coming up in the near future. If we are going to include lawns, do we want something recorded on the deed with regard to the lawn?

Allen: We haven't really gotten to that section, officially.

Irish: The new 6.3.6 – Permit Renewal – Such Operating Permits shall be renewed upon transfer of ownership of property.

Allen: Okay.

Irish: 7.0 – Responsible Entity – There shall be one named entity at

the time of permitting, either developer, land owner or home owner's association or condominium association responsible for the permit compliance under this regulation. Notice shall be made to the Board of Health when a responsible entity transfers ownership. Any transfer responsibility must be recorded in the deed for the property and responsibility for compliance shall transfer with the property.

Allen: Any problems? Okay.

Irish: 8.0 – Lawns

8.1 – An applicant shall only use slow release organic nitrogen fertilizers on lawns. An applicant shall provide the Board of Health with a copy of the deed to the property filed with the Plymouth County Registry of Deeds, which includes language only allowing the use of slow release organic nitrogen fertilizers on lawns.

Gleason: That is the issue. How do you inspect and regulate.

Allen: You can't.

? I think that just notifying the new home owner that nitrogen on lawns is a problem. I think that is the benefit of having this in here.

Gleason: But we are making a regulation. So, we would do well just to present a paper to the home owner when they buy their house, this is what we recommend and leave it at that.

Allen: Like suggest it, not have it as part of the regulation.

Gleason: We are trying to make a regulation. Personally, I would just as soon leave it out of the regulation all together.

Brady: Well, is it within the Board of Health's purview to address fertilizer on lawns or like John says, should it be a Town wide permitting issue. And should it instead be more stringent if you are a hundred yards to a open body of water versus a mile away from any open body of water.

Gleason: How are you going to enforce that?

Brady: I am not suggesting how you enforce it. I mean, how are you going to enforce any of this? We have big issues to address relative to what is going into our open water. I don't think lawns really comes under the purview of the Board of Health and or the Health Agent. Seriously look at that and say maybe we need a Town wide By-law that addresses something like that not something that is a regulation of the Board of Health.

Allen: Thank you.

Irish: Maybe re-visit when we re-visit storm water?

Pacewich: We had [?] the size of the lawn, 2500 square feet. That is enforceable because you are going to see a plan which shows you the lawn size. And include that in the deed. Then you stop anybody from exchanging on that lawn. And this is a discussion that Joe and I had, it fits right in with the new construction that you are talking

about. That is what we are talking about, new construction and building up new lawns.

? I don't want to go off on the deep end here, but it is bad enough that you are requiring every new home to [?] and this is the strongest it is going to be on the Cape. Now we are going to [?] the size of the lawn and what they can do there. I mean, there is a point where we are going a little bit overboard. This is fine where you are first doing it and it is strong and it is coming out strong. But I think that a lawn should be left aside.

? By doing all these regulations to the new construction. Essentially what you are doing is you are shutting down new construction. The cost of lots and the cost of these infrastructures, I don't see many people [?]. What about the people that already own the lot. Is there any grandfather provisions for those people who bought a lot [?].

Allen: Right now we are talking about lawns, if we are going to keep it in or take it out.

? Well, if you want to reduce nitrogen loading, then ban fertilizer.

? That is the most effective way to do it.

Allen: Correct.

? Town wide.

Allen: I understand but I don't think that that is something that right

? If you have a property owner and he has a failed system, does he also have to abide by the lawns?

Allen: If we keep the lawns in here.

? So if he's got a 13,000 square foot lawn, he would have to [?].

Allen: You can't expect him to do that.

Irish: I feel like we spent a lot of time on waste water and no time of lawns. So, just to fill it in.

Allen: I think we should delete the lawns.

Irish: We can re-visit another time.

So, the new 8.0

Allen: We both agree on removing the lawns.

Gleason: That is fine with me. I have no problem with that.

Irish: Okay. So the new 8.0 is – Review of Sub-division Plans by Board of Health – The Board of Health shall make the following recommendations when reviewing a definitive plan of a sub-division as required under Section 4D of the Town of Wareham Planning Board Rules and Regulations, governing the sub-division of land.

8.1 – The applicant shall utilize storm water [?] management practices in accordance with the structural classifications for the Massachusetts Storm Water Handbook or other updates approved by the Massachusetts Department of Environmental Protection and proven to achieve a minimum of 20%

reduction in the nitrogen load from storm water runoff.

Gleason:

I am no expert on that.

Costa:

As I said in my opening remarks, storm water is an important issue. Based on all those comments, I would encourage striking this section and just focusing more on a Town wide approach to storm water when you are looking at new development, sewerred areas and non-sewerred areas.

Gleason:

I would opt to delete it and defer to the storm water [?].

Allen:

I agree.

Irish:

The new, new 8.0 – Waiver – The Board of Health may waive strict compliance of specifically identified requirements of this regulation if such waiver is necessary to accommodate an overriding public interest and is consistent with Section 1 of this regulation, provided that the Board of Health finds in writing and after a public hearing that there are no reasonable alternatives that would allow for compliance with this regulation. However, the Board of Health shall not waive provisions of this regulation otherwise required by the D. E. P.

Gleason:

I have no problem with it.

Allen:

No.

Irish:

9.0 – Fines and Enforcement – The Board of Health and Health Agent shall be responsible for enforcing this regulation. Violations of this regulation may result in fines up to \$300 per offense each day or portion thereof, during which a violation continues, shall constitute a separate offense and each section of this regulation violated shall constitute a separate offense.

Gleason:

I have a problem with the \$300.

Allen:

It does seem up to.

Ethier:

It seems extreme to me. I think that is just sets the standard. That this is what you have to do and there are fines for people who do not comply. If you want to shut off your system

Gleason:

If it says up to then it is somewhat arbitrary.

Irish:

So, it is up to the Board.

Allen:

Should we have like a schedule.

Brady:

[?] establishing what you find caused the violation. As you said, if you choose to just shut it down because you don't want to spend the money or monitor or then there is a different consideration. But if it is a system that by design, should have met the standard but didn't, well, then the Health Agent and you all have the latitude to decide if in fact the fine is or should be imposed. And if so, at how much.

Gleason:

Leave it.

Allen:

Yes.

Irish:

10.0 – Severability – The provisions of this regulation are severable. If any provision of this regulation is declared to be invalid or inapplicable to any particular circumstance, that

invalidity or inapplicability will not affect the enforceability of the remainder of this regulation.

Allen: Good job.

Gleason: Want to say it again?

Irish: No.

Gleason: I have no problem with that. So then, I think we should make the changes that we have discussed and present the document to the Town Council for their review.

Allen: Should we make the changes, bring it back to the next meeting?

? Just a suggestion but your public meetings that have to occur, that are posted in the newspaper. You might end up with some changes from those public meetings.

Irish: I think [?] we were going to re-visit with Town Council.

Gleason: I think we should make the corrections because at the public hearing people have to have something to base their opinions on. So, that it is available for their perusal at the time of the public meeting.

Irish: And I would like to be able to say personally, if I am defending it, that we would be able to say that it has gone through Town Council.

Allen: Just for our own.

Irish: And then to go back to 3.4, we decided to get rid that, correct, based on getting rid of 1?

Allen: Yes.

Gleason: Right.

Irish: I mean, I would feel more comfortable if Town Council looked through it.

Allen: And then after Town Council goes through it, should we review it again?

Gleason: Right and then post a public hearing.

Allen: Okay.

Churchill: Essentially what it is, an analysis that I did. Basically the main purpose of the analysis was basically a little background history of where we are and where we have come and what we are trying to I can make copies of this if any of you would like one. It compares the alternative costs. I don't think we have seen enough information. I think there are other alternatives. It may help the every day person what they are facing. This is the additional costs. The installation and manufactured cost. When you call [?] system, it is \$8,500 plus tax, plus the installation of that, plus the wiring of that. That is the added cost in my spread sheet that you see here. It does not include the septic tank. It doesn't include the leeching field. That is added cost.

Begley: In the interests of transparency, I just want to let every one know that what was passed out, all I did was go to the Town of

Bourne's Board of Health and they had regulations that are already written on systems for fines, tracking and they have regulations for [?] testing requirements and any additional maintenance. And just to comment, I certainly appreciate research but what are people paying the betterment fee for?

Allen: We will take this and read it.

Brady: Also note that Bourne's standard is 19 too and their fine is \$500 period, not \$300 a day. We need to look at that.

Allen: Yes. We will look at that. Does anyone else have anything to offer, suggest. No? Then it is 5:26. I make a Motion that we adjourn.

Gleason: I second. Thank you for coming.

Meeting adjourned at 5:26 P.M. by Chairman Allen.

Prepared by: J. Reed
Date: July 5, 2011

Signed and dated: _____

Diane E. Allen, Chairman



Thomas L. Gleason, M.D., Member



Lisa T. Irish, Assoc. Member

