



TOWN OF WAREHAM

BOARD OF HEALTH
MEMORIAL TOWN HALL
54 MARION ROAD
WAREHAM, MA 02571

Board of Health
Frank DeFelice, Chairman
Glenn Monteiro, Member
Amy Wiegandt, Member
Robert E. Brady, Assoc. Member
Catherine Phinney, R.N., Assoc.
Member
Robert Ethier, Health Agent

MEETING MINUTES September 12, 2012

MEMBERS

Present: Frank DeFelice, Chairman,
Glenn Monteiro, Member,
Amy Wiegandt, Member,
Bob Brady, Assoc. Member

Absent: Catherine Phinney, R.N., Assoc. Member

Liaison: Ellen M. Begley

Health Agent: Robert M. Ethier

PUBLIC HEARINGS

4:00 - Signing of August 2, 2012 minutes.

4:05 - Proposed Housing Inspection Program

DeFelice: First on the agenda is the Proposed Housing Inspection Program. Bob had brought it up to us. So, go ahead Bob.

Ethier: Yes. It is the major concern in Wareham, the sub standard housing for renters perspective and from the landlords perspective. I think last week we had 10. We had 4 or 5 in one day complaints, something wrong with the house. It is all based on the State's Sanitary Code, Minimum Standards for Human Habitation, which is the housing code. And so, we spend a lot of time and effort. John Viverios is doing it but we were told that this would probably be the last year that the Community Development could fund his position and they think it is more a Board of Health thing than a Community Development issue. So, I thought that I could propose this regulation, which I have done before. Mister Andrews declined it because of obvious reasons with budgeting. But I think that with rental properties, and I wrote up the regulations, I haven't typed it up completely yet, but this is very detailed regulation for rental properties. So, they would have to get an inspection by staff from the Board of Health. There are fee schedules and fine schedules in here if they

don't ... for instance, here's a good example. We got a call about two weeks ago, maybe three weeks ago. The lady says I just moved out. I am living in the house where the landlord says, it is just a cottage and I am renting it as a cottage. So, there's no shower or bathtub in the house. And they are told to use the shower spicket up on the outside of the house. So, it is totally against the law. But that's what we would avoid. That's when people would be fined. That's when people who wouldn't be allowed to rent a house in Wareham. Now, I know I have spoken with our chairman, Frank, about this and he says that where he works there is a program through the Board of Health, an inspection program. But they have more staff than us. They have a better budget than us. This would have to be funded. I estimate that there is anywhere between 300 and 600 rentals and I am sure there is more than that. That is why I am estimating the hours in the overall figure.

Wiegandt: Is this for every rental?

Ethier: Every rental from apartments to condos, to houses that are rented in Wareham.

DeFelice: I would say that is really low ball and will give you one reason why. The town where I live, they have 1400 rentals.

Monteiro: I would say we have probably about a thousand here, easy.

DeFelice: Let me go a little bit further here. Bob had mentioned this to me. So, I checked it out, how they do it where I work. What they basically charge is \$50 for a person to get a rental fee to rent their place. And what happens is, a Board of Health agent goes out. But they do, where I am, they pick a section. One year they do a section and the next year another section. They don't do them all in that one year. But it is the law on the books though. So, if somebody wants to call, we have the strength that they can send somebody out. So, they take a third, a third and a third and then they do it again. But what they charge is I believe \$50. They take in, you multiply 50 times 1400, and they take in \$70,000. And that is just a one-time fee for the year. So, I don't think it is going to hurt those people that are renting to make sure that those houses are safe, to do something like this. So, I personally think it's a good idea. I don't think it's going to impact the rental property one iota for \$50 and it becomes a safety issue too. Go ahead.

Wiegandt: Would that be a \$50, say if somebody rents a lot of properties, it would be \$50 for every property?

Ethier: The chairman just said, it not only benefits the people who are going to rent but it benefits the people who are renting. We have a record of everything we have done according to the State Housing Inspection Code.

Wiegandt: If someone is renting at Cromesett, I don't know how many units are in there but at \$50, it would be \$50 per unit.

Ethier: Fair housing (?) you can have a lower fee for housing units like Brandy Hill would probably be \$10 per unit because there's a lot of units there. Right now we are close to 400 in a year and a half and we don't get any money for that. And that is personnel, either me, Dave or John and Johnny only works 19 hours. And it is a serious problem. If it is a serious problem, sometimes it is me and the other two guys that are writing up the whole thing and taking photos just to get an opinion (?) in the courts, whatever you have to do. So, we don't make any money on it now. So, it would need more personnel. David needs to be increased to 40 hours. He is not now. He is only there 4 days a week and John would be part of the program because he is good at what he does. There is no more funding money for him but I think the Town could make twice as much as the program costs.

And we can't do anything until we get the budget season again and propose it at Town Meeting.

Brady: So, there is no more CEDA money available for John's program?

Ethier: John spoke with the director a couple of days ago. I spoke with him before he said he was going to go before the board and ask them. He is of the opinion that this is not a problem of theirs. It is a problem of the Board of Health and they don't want to spend any more money. So, he says to keep the program going for this year, he would fund the \$20,000 through the grant that he gets from the State. But this is it.

Brady: Through 2013?

Ethier: Through 2013 but this is it. We have to find something else.

Brady: So, then in our proposed budget for the next fiscal year, we need to represent at least the same or equivalent time that John works. Otherwise increase Dave's time from whatever his hours are to 40 at least, with whatever number that represents. Is that correct?

Ethier: That's correct and I am not sure that is going to be enough. Right now, John doesn't have enough time to do all the calls in one week. Every call generates a letter and every letter generates a re-inspection in 30 days in a lot of cases. They don't comply in 30 days and then you have to bring them before the Board as we have done in the past or go to court as we have done in the past.

Brady: Should we then consider initiating a fee for his time to go out now and begin to generate the revenues that will hope to represent the increase that we would propose in the next budget cycle, starting whenever, starting tomorrow.

DeFelice: How would you do that though?

Brady: You can propose. Like he said, we don't collect a dime right now for all those inspections. You know it costs Eastham \$50. So, maybe the Board of Health needs to identify that for each and every one of those seasonal inspections or rentals....

DeFelice: Are you doing seasonal inspections right now?

Ethier: We don't do any inspections of housing.

DeFelice: John is called out because somebody has a complaint. How do you get that \$50 though?

Ethier: The number of people who (?) And they don't have any money.

Brady: I think what you have to do is.... How do you do it in Eastham where you identify rental property requiring a fee for inspection upon occupancy?

DeFelice: That's what we want to do here.

Brady: So, let's start that now. We know that John is covered financially through the end of this fiscal year. Let's begin to, I would propose, begin generating revenue for those inspections and justify his position, if the grant money is not going to be there.

DeFelice: I like that idea. The thing is and how they know who it is is because they have to come in and do that rental. So, every year, they know where that \$50 should be coming from. So, it is year after year once you get it implemented, then you got a record of all these rentals. The first year may be a little difficult because a lot of people just won't do it. But with only \$50, that could pay his way, no problem. Then he could be doing the other things we really need him on. I think that is not a bad idea.

Brady: For his value, it makes sense to target or to have the objective to have him full time.

Wiegandt: So, you are recommending the \$50 fee now for all rentals starting now?

Brady: Starting October 1.

Wiegandt: So, there are a lot of people that have rental property. How do you get the word out?

DeFelice: We would have to advertise, put it in the paper.

Brady: There would have to be a public announcement. Now, I don't know whom that announcement targets. Does it target the landlord? Does it target the tenant? Does it target both?

Wiegandt: We have to make sure legally that we are I think it is a good idea in general. But is it legal to say have as of October 1st without giving people warning and what is the legality of it. Do we have to give any, when we say starting as of January 1st?

Brady: We should have a database in the assessing department that identifies year round properties that are rental properties. We assess accordingly. For every rental property, we also additionally assess personal property tax. So, there should be a database already on our tax or assessing link that identifies all those properties. So, announce, send out a mailing.

Mulkhern: Hi, I'm Joe Mulkhern from Precinct 2. That was one of the things I was going to come up and talk to you about, the CEDA position there. I talked to John. I talked to the CEDA people and they said that after this year the position is just not going to be covered because CEDA says that they don't pay people to be employed by the Town. So, I love what John is doing but I hate to see that position being lost. So I was going to come before you people tonight and say that hopefully in 2013 we will appropriate funds to have someone fill the position or increase the 30-hour person, Dave, to 40 hours because there is a lot of work out there and my biggest problem is that it is not fair to be losing John. He does a great job. I am involved in demolition and condemned buildings and he has all kinds of information that helps me out a lot. So, I hoping that you people in 2013 will appropriate funds to your Board of Health and I would like to see the Selectmen do the same thing (?). I hope you people really look into it and fund this position for 2013 because John's is a position that is necessary and if you can't get him, increase the hours of the 30-hour health agent. Thank you.

DeFelice: Joe, I agree with you 100%. His job is too valuable to let go. Especially the number of people since I've been on the Board who came here where there has been complaints on. To let something like that go, what do you think Wareham is going to look like?

Wiegandt: Certainly if we are able to charge for the rentals, there will be some money coming in and we will be able to use that.

DeFelice: Bob, that was a great idea. Why not start it as soon as we can and maybe you can give us some more information. At the next meeting maybe we can implement it.

Brady: Well there should be a database for it providing information to getting out the information I would think.

Ethier: I will get these regulations typed up that we have been working on and get it before the Board and then we will have a public hearing when you finalize the regulations.

Brady: As you know better than anyone, the budget process is that department heads need to submit those budget requests and in response to Joe, it would be nice if we could just appropriate the money but it is not up to us. So, we need to submit a budget that represents whatever it is that John time equates to and include that in the proposal or request and then it is up to us and you Joe and whoever else, to get up and say, these are positions, this increase in the Board of Health's budget or the Health Department's budget are positions that warrant and more than pay for themselves. And that is the sell.

DeFelice: And continue on, that money that we are going to get if the rental program goes, that goes into the general budget and so we are not going to see it.

Brady: And it off sets the cost of having someone like John or Dave having more hours. Maybe we can ideally get both. Maybe that is the tact we take. We say, we want to increase Dave to 40 hours and we want John to at least continue at 19 or 25 or whatever and put that number out there and let the voters decide.

DeFelice: That's what we need to tell at Town Meeting.

Ethier: We made the proposal this year to the Finance Committee but there was just not enough money to get started.

DeFelice: But if we can come with this and say, look this is going to supplement their pay and we feel it could almost supplement it completely and it is doing a great service to the Town too. I think we could sell it, no problem at all.

Ethier: I will get working on it right away.

Monteiro: Bob how does this effect public housing like Brandy Hill or any units like Brandy Hill in Town that has apartment ready and has someone coming in.

Ethier: We get a lot of calls from Brandy Hill for fleas or sometimes you get the bed bugs.

Monteiro: I mean like say the apartment is ready and they are all set to go with the new tenant, do they contact you? How are you going to know it is open, where is the contact there? I am not talking about market rental, something I can rent.

DeFelice: Who controls that? You may not be able to after something like that.

Brady: You notify South Shore Housing.

Ethier: You tell them; this is what we are doing. This is our new

Brady: Or with any vacancy upon entering a new tenant relationship subject to inspection.

Ethier: I don't see a difficulty. There is some organization, if someone moves out and someone moves in, they got to let us know and we got to be on the list. I think we can organize that. We have a small staff, so we have to keep things in order and that's what we are good at. I think this would work also.

Monteiro: What I am saying that the private company, they inspect their own within reason. How are you going to know if there are 10 people moving out and 10 people moving in.

DeFelice: You got a point Glenn but this is just the first step. We can look at it.

Ethier: These regulations are modeled after Barnstable. Barnstable has more housing units and more, they got hundreds and hundreds of them. They have an inspector that goes down all of them. Whether somebody moves in or not, you got to go in there once a year and say, you going to pay \$10. I have to check the (?) and I will be back next week and you can bring me a check and I will do a regulation letter from the Board of Health for the protection of the tenant. You are a private organization. This is part the price of doing

business and it won't get to the point where we responding to complaints of doors falling off, and carpet not intact on the floor or the linoleum that is not even down and people are tripping. So, I think we can succeed with that.

Monteiro: Another thing, lets say a family has a house but the family lives upstairs on the second floor. Do they come under these regulations when they want to rent that unit?

Brady: If they are renting any unit, yes. Any rental unit in Wareham.

DeFelice: Yes, because it is a rental unit even though it is in their own house.

Monteiro: You are not going to get everybody. You are not going to inspect houses that are already inspected by Section 8 and those other agencies that come and help because they do their own.

Ethier: These are Board of Health regulations. We go into houses that are Section 8 and HUD and we have to call up the company and call Section 8 and say, listen this is unlivable. You guys have done an inspection, yet these people are living in squalor in these houses. The temperature is enough to scald a child in the bathtub. We check all of that. We can handle that.

Wiegandt: Specifically also, this group of the subsidized housing are some of the people that may not make phone calls. Maybe single moms with lots of kids because they are the ones that are going to be, won't make the phone calls. So we really need to protect them. I agree with it. You need the private industry to some degree. I think what we are charging is fair and it really does protect these folks.

DeFelice: That's the thing I like about it. You are not hurting anybody with \$50 or \$10. And that's for the whole year and it gives protection to the Town too. So, I just think it's a good idea. I agree with you Glenn, it is going to need some working out. Nothing is easy or goes smooth. But I know other towns, Harwich just called me actually about two months ago and said, hey Frank, do you guys have a (?) because they want to start it in their town. They are trying to make the building inspector do it. I told him that is the Health Department. I think we got enough on it. We will bring it up at the next meeting and see what we can do.

4:20 – Nitrogen Regulations

DeFelice: What I did today, I knew we were going to have to do something in the future on it. This is what I am putting out. The regulations we have right now under water quality protection, I will just go ahead and read it. This is the regulation that's in there right now. Pursuant to Chapter 111, section 31, MGL the Wareham Board of Health voted at its regular meeting held on May 6, 2003 to establish the new construction with set back requirements of 150 feet for all Soil Absorption Systems from a water course, wetland, as defined by the Wetlands Protection Act, 310, CMR 10, ponds, streams, river and all water wells. Ground water flow direction shall be indicated on all submitted plans. Now, what was told to me is this is the Nitrogen reducing part of what the Board of Health has. So, if that is the case, I think we should spell out something in there and so that is the reason why I would like to add to it and after I get done if somebody else wants to make suggestions, that's fine. What I would like to add to that is under A. 1, These projects shall be subject to the Nitrogen Loading Regulations which shall require the use of nitrogen reduction technology, such that the effluent does not exceed 19 parts per million nitrate nitrogen. Then I looked under the current, the existing, it says existing laws. A waiver may be granted by the Wareham Board

of Health upon receipt of an application for a waiver by the property owner and or his agent. I thought that was kind of ridiculous because here you are, now you got somebody that wants to build with 150 feet and now we are going to give him a waiver. So what I think that should say and I am proposing, is the existing dwelling or home, an existing dwelling or home, a waiver may be granted by the Wareham Board of Health upon receipt of an application for a waiver by property owner and or his agent in case of a failed system. Now, the only reason I am putting that in there, is because the people may not have the money. Maybe they can't. So, with existing homes they might be reasons why they just can't afford one of these systems.

Wiegandt: On the first part, this is only for new construction, the setback. And this is a failed system, this would need to be changed I think.

Brady: If you look at B Amy, it seems to represent any systems. He is proposing under existing homes. You have new construction under A and then you have what he is proposing under B for any existing systems in the case of failure. Either way Mr. Chairman, I would suggest that obviously the Board of Health has the latitude to grant the waiver in any case, if even upon new construction it is determined because as you know we are still selling surprisingly lots up in some parts of Town or in parts of Town which don't meet minimum zoning requirements and so they may not be able to meet particular set backs or criteria and that gives the Board of Health some latitude to also maybe grant waivers with conditions. It may have value to leave that open.

DeFelice: I agree with you because I will give you one of the reasons. Maybe the soil requires but doesn't need an alternative

Brady: Even is its new construction it may be far enough away from, say it's 400 feet. Well that may be worth consideration of a waiver.

Wiegandt: Should the footage be changed? I have talked to a lot of folks and if you increase this footage requirement so that say 500 feet you can encompass a lot more new construction areas, protects the water more. It is much more than 150 that we have now. Everyone is trying to get less nitrogen in the water. This is more than what we have done. It is certainly a baby step. It is not what everybody would want but it is certainly a baby step. There is not as much new construction these days as there was 10 years ago. It would certainly protect for new construction. The 19 parts is not perfect but it is better than what we have now. That would be my recommendation.

Brady: That makes sense. So, you would propose increasing that 150 to 500?

Wiegandt: Yes.

Monteiro: From the water?

Brady: A water course, pond, river, wetland, stream and all water wells. It doesn't matter about the size of the well. It depends on where it is in relation to water. The big thing is that it gives this Board latitude to grand waivers when you take things like lot size and other conditions, soil conditions, etc., into consideration.

Wiegandt: The Motion would be to change our existing water quality protection setback for the A to be the same except the dates would have to change and then the requirement of 500 feet instead of 150 feet. And within that, you would want to change so that it specifically states that these projects would be subject to (?) requiring nitrogen down to the 19 parts per million.

DeFelice: You don't have to word it. This already exists. You are just adding that. Page 49. If you just looked at this you wouldn't know they were even talking about nitrogen reducing by any amount or number or anything.

Ethier: I think just to change this, you have to have a public hearing. So, we will advertise it and put it on for next month. We will just have a hearing, answer any questions and give the reasons why and then we can vote it in.

DeFelice: I like the idea. I don't want to try and jump and say something and the Town doesn't realize what we are doing. I just wanted to talk about it.

Wiegandt: So, withdraw the Motion. When do you have to have public hearings and what for.

Ethier: We have always had public hearing for tobacco regulations or anything to do with nitrogen and Title 5.

Wiegandt: Didn't we make some changes to the tobacco regulations a couple of weeks ago?

Ethier: Right. We needed to change that. In fact I talked to Bob Collette a couple weeks ago and that is coming up later in the agenda, he thought it was voted in. I said, we didn't have a public hearing. We have to have a public hearing, the Board is in favor and this is what we plan on doing. People have a right to say their piece before the Board votes it. And believe it or not every regulation that the Board of Health votes in, whether its food or whatever, it all goes to the DEP, revised each year and they keep track of it.

Pacewicz: In section A it doesn't say anything about nitrogen reduction because it has nothing to do with nitrogen reduction. Because 150 feet from any waterway is going to what for the nitrogen reduction. How is it going to reduce it. The 500 feet how is it going to reduce the nitrogen pollution?

DeFelice: By putting one of these systems in.

Pacewicz: What I am saying here is whether you have 150 feet or 500 feet it has got nothing to do with nitrogen reduction.

DeFelice: I am going to tell you that bothers me more than anything when I read it. Today when I was looking at it, that's what hit me, exactly what you are saying.

Pacewicz: When you are talking about 19 parts per million, just some thoughts. 19 parts per million is approximately a 50% reduction in nitrogen loading. The plant does approximately 90% reduction in nitrogen. Now that is 90 parts per million total nitrogen, approximately 7% of the time for the average system here in Massachusetts. So, 30% of the time they don't get 19 parts per million, they get more. First of all you are not really achieving a 50% reduction because it only occurs 70% of the time. The other issue is that we have had some of these systems implemented and introduced in Wareham. The developers without mentioning any names, uses the most inexpensive they can get. On that particular system that was used and installed here, has blowers above ground. Makes noise. What do you think the first thing the home owner does, they shut them off. And these regulations, no reporting requirements, no maintenance requirements, which are State requirements. State requirements, if you are using an alternative septic system, you have to have an operation and maintenance agreement.

DeFelice: Why are you saying there is none. The State has it.

Pacewicz: You don't have it in your regulations.

Brady: Why should we supercede the State?

Pacewicz: Is the Board of Health monitoring these systems today?
DeFelice: I specifically asked, not to Bob, but to his assistant and he told me that all 40 or 41 that we have in Town, he has talked to every single one of them and they are all on a maintenance contract now. Now, I am talking about the regulation. I don't want to get something that you can bring this up at the end. I want to bring up and you can have your say later.
Pacewicz: Okay. We have got a lot of room to do better than 19 parts per million. And I thought we did compromise when we discussed it and came up with 12 parts per million and that's what I would recommend as far as this section is concerned instead of 19.
Mulhern: I agree with Ed 100%. It has to be in the regulations so that we can enforce it. You have to regulate it somehow. So when you come up with this before the public just makes sure they know.

4:40 – 260 County Road – Victor Brier

I would just like to say that I have forwarded the Board members letters from the DEP, Bob Johnson who is the solid waste engineer that works on this particular project. Also, I have given some of the residents or most of the residents my cell phone and I do get calls on weekends and I think I have gotten 3 calls from Mr. Roy and Mrs. Muse on Friday night saying that the smell from 10 o'clock to 1 o'clock, somewhere in that time frame was bad. I have categorized those complaints, sent copies of those complaints to you because they are also e-mails. They were also e-mailed by the persons making the complaints to the DEP so they have a record. I have not been back out to the site. I think one of our Board Members, Mr. Monteiro has been out there. He probably knows more than I do. But that is the extent of what is happening here with myself. I did send a letter to the DEP, to Mr. Johnson the supervisor, telling him what we found there and that we would certainly entertain any ideas that he might have to help Mr. Brier out with whatever the complaints are and how he can appease the neighbors and maybe make this go away so Mr. Brier can operate his business and everybody is happy.

De Felice: I just want to understand the reason he is here today. Is it because of the continuing complaint?

Monteiro: I was there Monday and I collected some samples. When I got to the piles, they were higher than we have seen them before. I thought Victor was going to knock them down a little bit and help with the vaporizing as far as the smell coming up. But it seems to be almost as tall as the trees. So, what I did get. This is the one I got from the plant. As you can see, nice and clean. No problem. 90 degrees I had it in my car, no problem. This one I got Monday I had to put in the trunk. This was kind of smelly. But right now, it doesn't smell. It is just like that one except it is not bleached. A couple of places on Blackmore Pond Road. I stopped. The wind was blowing in my face. Mrs. Muse's flags were blowing toward me. So the breeze was coming from that end. I stayed there 5 – 7 minutes. I didn't smell anything. So, it is one of those things you can continue without a finding. I don't know how you are going to solve it. Sometimes it smells, sometimes it doesn't. One question for you Victor. Are those your trucks or from Tiverton.

Brier: Those are my trucks.

Monteiro: How often do you go get the shells?

Brier: Every day.

Monteiro: When is your next day. I want to go up there the next time.

Brier: I don't go up there myself. We have two truck drivers. My drivers go there.

Monteiro: So, when is your next trip. Frank and I, Friday if you want.

Brier: It is not my position to give permission to anyone to go to someone else's business. All I can do is ask them on a certain if he will allow people from the Board to go up and look at his business. But don't think its up to me.

Monteiro: He turned me down. He wouldn't let me go through. I asked a half a dozen times.

Brier: I questioned that. I asked them. Their answer was that basically he didn't know who you were. They do their thing. But however, I can ask the owners.

Monteiro: If you get turned down, there is no reason why I can't go with your truck driver. Just to go shotgun and see exactly how it comes. Do you only get it from this company?

(?) Mr. Ethier referred to a letter that came from Mr. Johnson. May I see that? Is it a recent letter?

Brady: It was an e-mail in response to a complaint.

(?) Can we see the letter?

DeFelice: Sure. It is public information.

(?) I'd like it for the hearing we are having right now so that I can read it. Because Mr. Johnson went to the site and had a conversation with Victor two days ago. So, I want to see what it is in it in terms of complaint. He went there yesterday. There calls came in last week. One of them was Monday morning.

Ethier: I didn't have a letter yesterday. This was started August 28, 2012 at 8:28 PM. It was an e-mail from Mr. Roy to Mr. Johnson, who is the DEP inspector. There was subsequent e-mails after that. I can read them if the Board would like me to.

(?) I mean can I just see it. It is being offered and quite frankly it seems like there Impropriety has been discovered here.

Brady: There is a complaint.

(?) Mr. Johnson went out and inspected it and our information if that he didn't confirm any of the complaints of odor.

DeFelice: Let me say something now. Back to the thing that bothers me. He has been out there three times and has found nothing. He has gone on the other side to where the wind is blowing and where the smell is, smells nothing. And then after he goes over there, after the complaint and smells nothing, he goes on to Mr. Briers property and guess what, he smells nothing there. So, what the heck is going on? That's my question. I agree with what you are going to be saying now. He has found nothing the three times he has been there. Gone over to the other people's property, over there, smelled nothing, wind blowing, and then it stops. So he went back over. Now if the wind is blowing that is one thing but when the wind stops the smell can't stop. It has to be wherever it is. And then he goes over to Mr. Brier's property and doesn't smell nothing. Now, I do know the tide comes in and the tide goes out. That I do know. I don't have a problem you seeing these letters.

(?) When a neighbor calls and says there is a bad odor there I don't think we have a sense of bad odor coming from Victor's property because we sent our, the DEP, Mr. Johnson went out three different times in response to this hot line call that they received. He didn't confirm any odors at all. At what point is this Board going to stop jumping every

time the neighbors snap their fingers and make a call. Victor is trying to make a living doing this. He has done a program, right after we were here. He went on line to see what he could find about odor management and he took an online course at the University of Idaho and they set up a protocol that he can do. He learned how to see if there was really a smell out there. He checks it several times a day. He also checks the wind direction, the humidity, where the tide is and he puts all this together for the past month. He can't smell anything over there. There may be another source that this odor is coming from. There used to be a 25-acre fresh water pond, which is located on the other side of these people's houses. It got blown out during the hurricane. All the fresh water creatures died and now the level of this when the tide is out is much lower than the level it was at when it was fresh water. So, a lot of (?) has occurred when all of the animals and fish and microorganisms have started to rot. So, I don't know if that is the source of this smell here. But it would seem that we haven't established that the source of this odor is Mr. Brier's business and we can't come back here every month.

Brady: So, are you suggesting that that (bleach) in the fresh water pond is what's causing the odor and so it's tidal?

(?) Yes.

Brady: Can your documentation substantiate that?

(?) No. Look don't get

Brady: Well what your saying on the record.

(?) I have an issue.....

DeFelice: Wait a minute. Hold it..

Brady: You have an issue with me?

(?) Yes. I do.

Brady: I don't have an issue. He is suggesting or at least implying that the issue is tidal and has nothing to do with your shells. Now,

Brier: My (?) is to make sure that anything that I am doing is not causing harm to my neighbors. And I don't care about any of it. We have had a professional from the DEP that says that it is not coming from Mr. Brier. Now, I am not going to go out and determine where it's coming from for this Board unless you want to pay me.

Brady: Well then he shouldn't go on the record to suggest that is what you're doing. Because that is what he is saying.

(?) Don't tell me what I shouldn't do. I have suggested there is another possible source.

Brady: You said for a month, he has been monitoring these occurrences. Just for the record, I want to be clear.

Wiegandt: You have a business and if no one has smelled it right at the site. You certainly want to have proof that it is coming from your site.

Brier: It has never been proven.

Wiegandt: At the same time, if it is low water or low tide problem. You can usually tell from the time of day and all that. That's a pretty easy thing to figure out. Perhaps we need a little more research. I would recommend, I know there has been complaints for 10 years in that area and the folks from the letter that I had seen in an e-mail, had recommended that odors are sometimes weird and hard to figure out. So, maybe a little bit more time and everybody paying attention to what is going on and when the odors are, that we will eventually figure out where they are actually coming from. I think that is fair to

both to them. Just do what we are doing and I wouldn't jump to conclusions on his behalf. I don't think that's fair. Just give it a little bit more time. The odor hot lines are out there.

DeFelice: The DEP is involved now. So, let them do it. They have come up with nothing. Let the DEP keep doing it.

Neighbor: I just want to live on my property. It smells and it was obviously the shells.

DeFelice: I think you brought that up a little bit too much. It is a one occurrence. It was a failed plant in all the letters you sent. I object to that because as far as I know, it happened one time. It was the plant that made the mistake. Now we fined Mr. Brier and I really didn't want to do that but it was his property. The plant should have been the one that got fined.

(?) Point of order. I moved into this Town 3 years ago and I think this lady here, when I started coming to the Board of Health meeting, she was part of a group of people up in that area complaining. As the Board of Health, it is your responsibility to take care of this problem. Myself, I buy shells every year for my driveway. The stink when they come. I think these shells are coming from wherever they are and they are not chlorinated. My opinion is that the clam shells coming into the Town of Pembroke and my driveway stinks and it takes months for that smell to go away. It is not this gentleman's fault. But if they are not coming in clean, they are going to stink.

DeFelice: You are making the point that I just said and you are saying it is the Board of Health's problem. No. It is not. I am sorry to say.

(?) I sat at the last meeting when you said and through the Health Agent it is our responsibility (Town of Pembroke) not the DEP because we have the right to shut him down.

DeFelice: But we don't know where it is coming from for sure.

(?) You don't care (?) where it comes from.

DeFelice: I am sorry but you are 100% wrong.

(?) You are insulting me.

DeFelice: Hey. Hey. Victor.

Brier: I have a right to speak back to him.

DeFelice: I am going to let you. But listen. The DEP is involved in this. They are the ones who license this. Not the Board of Health. We didn't license this property. So, I feel the DEP has a responsibility to make sure those shells come to that property without smelling. So, they are the ones in violation if something is happening. So, go-ahead Mr. Brier, direct it to me though.

Brier: First of all, I appreciate his opinion and everyone should have one. The fact of the matter is, this gentleman is upset that he has these shells and who knows where he got them. It wasn't from Victor Brier. I don't know if he got them from a hand-shucking place. That is not my business. I am sorry for what he got. They did not come from my yard. Lets keep this discussion on my property and my materials. Please don't bring in other people's problems from other towns and put it on me.

Brady: Mr. Chairman, if I could move this along. Counsel for Mr. Brier has asked about the letter. I would be willing to read it into the record. It is an e-mail and it is in response to numerous complaints not just one, Mr. Roy, Mrs. Muse, etc have gone on record formally, officially and his response was and this is dated for the record, August 30th. And there have been other complaints since then because he, Bob Johnson, encouraged them to

call anytime because Bob Johnson doesn't work at 1 o'clock in the morning or at 3 o'clock in the morning but he does live in Lakeville and so he is a little more available than needing to come from Boston. But he says, as I explained in my earlier message to Mr. Roy, and this is in response to Mrs. Muse, this is a very difficult problem to nail down for they can be erratic and intermittent and as you said they can come and go with the intensity varying widely depending on weather and wind conditions. (Speed and direction) As I said, this situation is on my radar screen and although I can't be there continuously, I am trying to patrol the area as frequently as I can but clearly please, call immediately when they are happening so that I can get there ASAP. As it stands right now, although we have had instances during the late afternoon, it appears that odors are more typically during the night or early morning. For example, this morning when I got into work, I received your call from 5 o'clock last night, which is obviously after the fact, but just to let you know, I cruised by earlier this afternoon at about 3:15. I smelled nothing. Not to sound weird but odors are tricky and all we can do is keep at it. Just to also let you know, I am planning to do an inspection of the site within the next week, within the next several days in order to get a better handle on the situation out there. Thank you for calling and he signs off B. J. So that is the letter that we are referencing.

(?) That is dated August what?

Brady: 30th I believe I said. But hold on. August 30th at 9:21 AM. That was the last response I have seen from Bob. So, it has been 10 days, 12 days. There has been though, acknowledgement of additional complaints. So, (end of tape)

(?) He went over to that house, couldn't smell a thing. He immediately came over to Victor's trailer on the property and said, Victor can we go down and look at the piles. Johnson hadn't been on Victor's property. They went down to the pile, walked all around it, picked up a handful of shells, put them right up to his nose and said, I can't smell a thing. Walked around, I can't smell a thing. Told Victor he couldn't smell a thing when he was walking around the people's houses, who had just made a complaint within the hour. He also remarked about how good Victor's site had gone. Johnson had been involved with DEP in 2009 when they set the rules and parameters for the operation of this. He told Victor that the site looked great and he commented that he had made a lot of progress with a lot of the stumps. The (?) he felt were in good shape. And essentially there was not one thing that Johnson that wasn't (?) of Victor's operation. He said that he had received 3 calls on the hot line within the last week. Had been down to investigate each of the hot line calls, couldn't confirm, couldn't smell anything when he went down there. So, I don't know if there is something wrong with Mr. Johnson's sniffer or what but the DEP is put in charge of this area and so I would assume that this is his area of expertise.

DeFelice: Two weeks ago I had a very long talk with Bob Johnson and I said to him, the Board of Health would like to work with the DEP on this subject because we know we have some responsibility. We are not trying to throw our responsibility away. I said, Bob any time you come down there, you call me; I will be there with you. He never called me in the two weeks time. I just wanted you to know that we went out, and out and said, let us go, we will work with you. So, we are not trying to hide away from the subject or what's going on. The DEP just didn't call. I haven't talked to him since. The DEP is the one that actually licensed everything out there. I know we are to a degree to and we are not trying to hide from that.

(?) Well, Victor is trying to work with everybody too. He is taking this seriously. He has got his loose-leaf book here. He's got all the dates and everything that he is doing. He is not blowing this off. He wants to solve the problem if there is a problem. Once you plant a seed in someone's mind, whether it is about a lot of things, it is difficult to get it out, to unpersuade them that they are not right, whether it's a window or whether it's a smell.

DeFelice: I am going to call Bob Johnson tomorrow. I would like to go with the suggestion that Amy said. We can't find out where it is yet. We are not sure. Lets move along. Lets continue doing what we are doing. If there is a call, we go out. I will check and I know Glenn and we are pretty easy. We will talk to Bob Johnson. What is your suggestion on settling the problem?

(?) I don't have an explanation for it. Other than what Victor has done on line, he has found out that odors are, this was an agricultural odor that they were dealing with. There is a whole system and methodology to determine the source of the odor.

DeFelice: When the trucks come in, it has been mentioned several times, that there is an odor coming out of there.

Ethier: I understand he is working hard and I applaud his efforts. But I know this that these people live here 24 hours a day, not 8 minutes, not an hour like Bob comes down in an hour. These people smell something and I am glad he is up on it. Mr. Brier is helping us with his lawyer to try to find out. There is something that smells sometime within that 24 hour period.

Brady: If I could suggest because for me, aside for the one incident which clearly was identified and the record showed and every body admitted that there was a breakdown somewhere and he received scallops the size of which I had on my dinner plate sometime. But the only other explanation would be that this is likely tidal. So, between now and the next time we meet for discussion, we should probably identify every low tide for the convenience of any of us that can be in that neighborhood during that extreme low tide, whether the wind is blowing right or not, doesn't matter. Now if it is simply from the water coming off the trucks that are coming from that plant. If it is the water that is the issue and when that truck dumps 30 or 26 or however many yards he has on that truck together with now a hundred gallons of

Brier: No way. I object to that. It is impossible. I know what water goes through that truck. I see it. I know how much it is. I have been monitoring it.

Brady: I was speaking and you need to stop it.

Brier: I just get so excited. I am being harassed.

Brady: We are trying to identify the source.

DeFelice: I don't think he is harassing you Mr. Brier. I really don't.

Brady: But if a hundred gallons or 50 gallons or whatever, liquid water, liquid waste, if you will, comes off of that truck with each delivery, then that water has to go somewhere and it is likely in the ground and it is spreading God knows how far, together with the right temperature, humidity and wind, it's got to go somewhere.

Brier: You don't even know how much. You don't know anything about what you are talking about.

DeFelice: Let me say this. That water is not your problem. That's coming from the plant.

Brady: Well it is his problem if it's coming from the truck.

DeFelice: But it is the plant that is doing it. So, I don't know why he is getting so upset.

Brady: That's up to you to control.

Monteiro: That's why I want to go with Victor to that plant and see how the shells go into that truck from New Bedford to Wareham. See what goes inside. Take samples like the gentleman gave me. But the samples are two different samples.

(?) Victor has monitored carefully each delivery since we were last in here. Victor, how much water would you estimate comes out of the truck.

Brier: You won't see a gallon. I am sick of this because you don't know how it's done.

(?) So, we can contest that. It is not 50 gallons of water.

DeFelice: So, we need to find that out.

(?) Victor has also monitored the tides.

DeFelice: Hold it. Hold it Victor all right. We got a plan now. If you can get Glenn and I will go with him if you can get it on a Friday, we will go out to the plant. But the other thing is, we are going to talk to Bob about somehow monitoring the tides. So, we will see if we can get somebody to monitor the tides in the future. Find out how much water is coming out. I am going to call Bob Johnson and see if next time I can go out there with him. Glenn can go out there with him. This is not a dead issue. But we will not have you come anymore if we don't need you.

Brier: I have been monitoring the tides and I have all the data right here in front of you. Every hour, all my spotting, all my testing. I have taken pictures of the tides, shows that the rivers are completely drained out. I know whether they are minus point 1. I know whether they are plus point 7. I know where the moon tides are. I know the whole tides, the quarter tides. I have everything monitored here. I am doing the best I can but I am not hired to do this. I am defending myself because I have been accused.

DeFelice: Now if you want to turn some of that over to Mr. Ethier that's fine.

(?) Does the Board have in it's possession the times and dates when this smell is alleged to have occurred so that Victor can match it up with his data on high tides.

Wiegandt: It is easy to do. If you have times and dates, you don't anyone's specific data. You have tide charts. It is easy to figure out with tide charts.

Brier: I been involved with the weather station since this thing occurred. I can tell you everything you want to know.

Brady: Just for the record, I was awfully skeptical of all the complaints and so I started following the tides. And the day of the complaint back in August, I visited and clearly without question it just happened to be coincidentally when the plant had a problem and the meat was this big on the shell. So, maybe this was a one-time problem. I was very skeptical but yet the evidence showed that the smell was coming from that pile because of those shells because of whatever that the evidence was irrefutable and so now because we want to give him the continued benefit of the doubt, we are going to monitor tides for the next two weeks or until we meet again and have a record like you have been monitoring to identify if instead the complaints are coincidental with tides. Then we would be looking at a whole different situation.

Brier: You can get a smell from the shells at these houses but you can't smell it at the shell pile. I don't know how that happens. If you can smell it at the house, you should sure as heck smell it at the piles.

DeFelice: We are going to work on it and thank you for working with us. We will not ask you to come again unless it is completely necessary and we found whatever.

Brier: If we do come again, I would like advanced notice of the day when the incident or the offense occurred. Because the notice that we got today, they are still talking the June 14th incident. Just so we may want to bring in somebody who was a witness on that day, Mr. Johnson, with some specificity as to what we are dealing with when we come before you so we can make preparations to rebut. We don't have all the complaints that the health agent is providing the

Monteiro: So Victor, you work on that owner so we can go visit the plant. You can knock those piles down a little lower.

Brier: His exact words were, he said, Victor I can see you have kept this down much lower and much neater and nicer but I will be honest with you, there is no smell here. So keep up the good work and I will see if I get another call on the hot line, I will have to stay on that. But at some point when nothing is being found, the taxpayers are going to get sick and tired of sending me out. But those were his words not my words.

Monteiro: But he didn't mention anything about lowering the piles anymore.

Brier: No. If there is nothing wrong why should I change it?

Ethier: I know when I was in the engineering business, we used to monitor smells at landfills and a lot of times we would put masking agents on fences like down near that big (?). Now I am not suggesting that that is what you do here but they had meters set up that would give you a 24 hour composite sample of what came through that air at different parts of that site. I don't know how expensive it is. Maybe I will ask Mr. Johnson if they have one.

Brier: I studied all of the readings and all of the techniques they have and everything. There isn't anything. I have been telling you right here basically. They have carbon masses. They come up with electronic noses. \$75,000. They all have to be calibrated. Odor is a gas. There are certain gasses and certain gasses break down. When it comes down to identifying a smell, you have to have 8 people who are certified to do it. Then they have to go to another area and see if the smell is the same as they got there. It is a very complicated and it is very expensive. There is one thing that we can do. If we can find one offensive smell, which I am trying hard to do. I am using a system that Waste Management uses. I am into this now. You forced me into this and maybe at the end everyone can learn something. I am willing to do anything.

DeFelice: Thank you Victor.

5:00 PM – Daniel Paine – Application for Tattoo Practitioner

Mr. Daniel Paine approached the board for his tattoo practitioner license. Amy Wiegandt, M.D. reviewed his paperwork and qualifications. Dr. Wiegandt recommended to the board to issue a license as all paperwork was up to date and in order. Dr. Wiegandt states Mr. Paine needs to update his D.T.P. Dr. Wiegandt made a motion to grant a license for tattoo practitioner. Second by Mr. Monteiro.

5:05 PM – Wareham Liquors – 419 Main Street – Tobacco Violation

Ethier: Bob Collette had notified the office that Cape Cod, he represents Cape Cod Tobacco Control Program out of Barnstable as well as the DPH tobacco program in Boston. On September 7, 2012, he observed this personnel displaying tobacco products with potential access to persons under 18, which means the State law which we uphold through the local boards of health say that you can't have paraphernalia of any type that might be used for the use of drugs. There were things like blunts and different types of materials that could be used as that and the rule says in the State regulations that you can't have it on the counter where people can access it. It would have to be behind the counter where the person that is working in the store at the time can take it off the shelf and deliver it to the person after it is purchased with the proper Identification of the age. So, he said there was two violations there. That is the only violation that I see. He was under the impression that we had already passed the regulation that we talked about last time. The Board wanted us to come back with it and then we were going to decide about the machine and the blunt. So this is a viable offense according to the law that is in effect now and he suggested that the Board would fine this gentleman \$100 for the violation to the State regulation, which we uphold.

Monteiro: How do we know that someone bought those that are under 18?

Wiegandt: Just because it is there. Just because somebody hasn't bought it, the law states that it can't be out where somebody could sneak it. So, that a kid can't come up and take it.

Monteiro: I went there three times this week and I didn't see anything that would be a violation. Maybe they moved it since. But the front of the counter was gum, candy and energy drink. And if Bob saw this, did he make the correction there to tell the gentleman to put it aside or is he going to leave it there until we have a meeting and in the meantime somebody can come in and buy it.

Wiegandt: Just because it is there. I can't be out where someone can sneak it. They can't take it.

Monteriro: I went there three times this week and didn't see any thing out.

DeFelice: Did you know that was a violation?

Wareham Liquors: No, now we know we won't leave anything out.

DeFelice: What was out there?

Wareham Liquors: One small box with a couple of cigars in it.

Monterio: You don't sell blunts?

Wiegandt: What is a blunt?

A blunt has no tobacco, they roll their own.

So it is like a cigar.

Wiegandt: So do I understand this is his first offense?

Monterio: So it doesn't sound like he had a lot out there.

Ethier: Well, according to Bob, he did. He had a lot out there. Is that right Sir?

Wareham Liq. Yes.

Ethier: There were more than one box on the counter. There were several. Is that right Sir.

Wareham Liq. There were electric cigarettes.

Ethier: They are not supposed to be on the counter either. I was hoping Bob would show up for this because he has all the evidence. He originally said it was a

\$200.00 fine. I don't know if you want to wait for Bob and have this gentleman come back and make a decision. I don't like to make a decision on hear say. It may be more fair to this gentleman.

Wareham Liq. I will pay the fine.

Monterio: You don't have to pay a fine if you don't have to. You have to keep these things away from the counter where kids can just walk in. If you want to wait until Bob comes back to....

Wiegandt: Well, well I am, just out of respect for you. Otherwise he is going to have to come back. Either we fine him this now or he will have to come back to another meeting. The outcome may be the same as the second meeting. It maybe saving him time. What would you prefer sir?
To be fined the \$100.00.

Wiegandt: I don't have a problem with that because if he is saying it then he knows there was a mistake.

Ethier: I would rather he come back. I don't want him to leave here feeling he broke the law.

Monterio: And it was such a small package anyhow.

Ethier: That's why I would prefer he came back. He told me he had a significant amount.

DeFelice: Let, me make a decision. At this time we will fine him only the \$100.00 but only with the advice of Mr. Collette. We will wait to hear from him. If there is a change we will take it back. At this point make a motion.

Monterio: Do you want him to pay the fine now or after Mr. Collette comes in.

Ethier: I will speak with Mr. Collette in the morning and if you want to call the office, I will tell you what he said. Maybe we can be on conference call. If the board feels we can take that decision now and if the board takes that motion now then we will go with that.

Wiegandt: So I will make a motion now that I move to fine him a \$100.00 for the violation of tobacco and with the approval of Mr. Collette.

Monterio: I'll second that.

DeFelice: All in approval.

Board Members: I. (All say I)

DeFelice: Approved.

5:10 p.m. Tobacco Regulations- Discussion

Ethier: Mr. Collette is not here. This is just what we were talking about, the blunts. We want to change the regulations to include these blunts in our regulation. As it is now, it is just a formality because we already have them in the state regulations that we uphold. If we put them in our regulations, I can go out there and fine these places also.

Old Business

DeFelice: I got a phone call from someone who has horses next door to them. They want to know how do people get these license. Do they just go in and someone gives it to them?

Monterio: Well, they have to be zoned, right?

DeFelice: Can you just license these guys? We don't have anything in our regulations that says basically before we give an ok, we must get an approval from the zoning enforcement officer.

Ethier: We should add that. And I had this discussion with staff today. Everyone has this impression because this case is coming up and ...

DeFelice: Tonight!

Ethier: think we should now have them sign off before we issue permits, well that's not the way it works. It starts off in the Building Dept. for every permit before it ever goes out. Now when we gave them their license we went down to the.... and this is where something probably got screwed up.

Wiegandt: I'm lost. I need to know the background.

DeFelice: I got a call from the guy complaining next door because the horse is on less than five acres. He said it was easy, just go down to the Board of Health and get a permit. I said, I don't believe it is that easy. Then he said they are going in front of the Board tonight.

Wiegandt: I am looking under our horses and ponies regulations in our book. It doesn't say how much land we have to have.

Ethier: Right and that is a zoning issue and if we add it in there it has to be by decision of the zoning agent. We have had a few town administrators and this.... It has to originate in that office. If someone wants a stable permit or builds a shed to put some wild life in, it has to start there. They cant just give you a verbal agreement that it is ok that we don't have a problem with horses or we don't have it in the zoning by-law, well it is in the zoning by law and did get issued permits. We have 30 how many stables 25 -30 that have been there for 30 or more years, and they are on small, small lots and I think this will help at your suggestion we can add that in that it has to be the lot size has to be ok by zoning.

Well that takes it off us. It is pretty hard to say no because you don't have a lot size saying you cant put it on two acres or you cant put on a lot that size. I know most of the towns need five acres or less you need zoning approval. That's what is should say in there. All permits require prior approval from zoning board for five acres or less.

Monterio: What about the people who already have stables.

DeFelice: Well they are grand fathered. They already have them there.

We are making a new rule.

Ethier: They had to build a stable, they built a giant barn, and they had to have a building permit, somewhere along the line. It can't be a verbal it has to be they have a regular permit issued from them to us and we sign off.

New Business

1. Flu Clinic will be held on September 25th 1:00 – 3:00 p.m. and October 2, 2012 from 9:00 – 12:00 a.m.
2. Rochester had a case of a horse that died due to Triple EEE. This is what the state or the rule that comes out of the Department of Public Health from the office of epidemiology. If a triple EEE case of any type in a town is determined, the alert goes to critical and that makes the adjoining towns alert jump up one more. It jumps by virtue of case. I posted a bulletin and I sent it to everybody. The police, the schools, saying to consider outdoor evening events to avoid peek mosquito activity between dusk and dawn. I spoke with the superintendent and they are doing it. There will be no activity on the fields in Wareham during these peek hours. It is posted everywhere; it is on all the news. We update our website weekly.
3. There will be a BBQ for the Medical Reserve Corp. volunteers on September 18, 2012 @ 6:00 p.m. in the Wareham Town Hall bottom floor cafeteria.
4. Joe Mulkern- Has notice the assoc. member has not been present. He would like the board to look into an alternate member on the board if there is an absent member. Mr. DeFelice will look into the possibility

Amy Wiegandt, M.D. moves to the close the meeting at 6:07 p.m. Second by Mr. Monterio.

Respectfully submitted: Jody Reed, September 14, 2012

Signed and dated: *Jody Reed*

Frank DeFelice
Frank DeFelice, Chairman

Glenn Monteiro
Glenn Monteiro, Member

Amy Wiegandt
Amy Wiegandt, Member