

*Dale Fuller*  
TOWN OF ORLEANS  
TOWN CLERKS OFFICE  
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## **TOWN OF ORLEANS - BOARD OF HEALTH**

### **MINUTES OF MEETING**

**March 5, 2009**

Chairman Sims McGrath called a meeting of the Board of Health to order at 2:04 p.m. on Thursday, March 5, 2009 in the Skaket Meeting Room of the Orleans Town Hall.

Present: Chairman Sims McGrath, Robin Davis, Ph.D., Susan Christie, Jan Schneider, M.D.; and Robert Canning, Health Agent. Finance Committee Liaison Dale Fuller.

Excused: Augusta McKusick

#### **Public/Press**

There was no one present for Public or Press.

#### **Approval of Minutes**

The minutes of the Board of Health meeting held on February 19, 2009 had previously been distributed to the Board members for review.

**On a motion by Dr. Schneider and seconded by Ms. Christie, the Board of Health voted to approve the minutes of the meeting of the Board of Health held on February 19, 2009. The vote was 4-0-0.**

The minutes of the Board of Health meeting held on November 2, 2006 had previously been distributed to the Board members for review.

**On a motion by Dr. Schneider and seconded by Ms. Christie, the Board of Health voted to approve the minutes of the meeting of the Board of Health held on November 2, 2006. The vote was 4-0-0.**

The minutes of the Board of Health meeting held on December 1, 2005 had previously been distributed to the Board members for review.

**On a motion by Dr. Schneider and seconded by Dr. Davis, the Board of Health voted to accept, as amended, the minutes of the meeting of the Board of Health held on December 1, 2005. The vote was 3-0-1. Ms. Christie abstained from this vote because she was not present at that meeting.**

#### **Health Agent's Report**

Mr. Canning reported on the following:

##### **Permits**

Hess Corporation has applied for a Frozen Dessert License for its facility at 401 South Orleans Road. They would like to install a Slushy Machine.

**On a motion by Dr. Schneider and seconded by Dr. Davis, the Board of Health voted to approve a Frozen Dessert License for Hess Corporation at its location at 401 South Orleans Road. The vote was 4-0-0.**

#### **Barnstable County I/A Management Program**

On February 5, 2009 the Board of Health discussed the proposed changes to the Barnstable County I/A Management Program. At that time they discussed that in order to maintain the program the County would have to charge system operators \$50 annually per system for the use of the reporting system. It was also discussed that the Orleans Board of Health Subsurface Sewage Disposal Regulations require

owners and operators of all Innovative/Alternative sewage treatment technologies to report the results to the Barnstable County Department of Health and Environment. Such reporting must be performed in the manner specified by Barnstable County Department of Health and Environment.

At the conclusion of the discussion the Board requested that the Health Department ask Town Counsel if Orleans' local regulations are sufficient and the Board also authorized the Health Department, after receiving Town Counsel's comments, to send a letter of support to the Barnstable County Health Department.

On March 3, 2009, Erika Woods met with Town Counsel. Attorney Ford suggested that the Board of Health send letters to the owners currently utilizing I/A technology informing them that the County would be administering fees to the system operators in order for the County to analyze and process the information that is required to be reported to the County per the Board of Health regulations and that the operators would likely pass those fees on to the owners.

With regard to the letter of support, Town Counsel saw no legal issues with the Board of Health signing the letter of support and felt that the term "recognizes the need" places no onus on the town to pay for that position. He did, however, express concern that the Board is showing support for a "new" position at the County in this tough fiscal time.

Mr. Canning will send letters to all owners of I/A technology informing them of this new requirement.

### **Industrial Area Survey**

The Health Department continues to follow up on the concerns raised about the industrial area. They have been working closely with the owners and occupants to address any outstanding items that must be attended to. As part of their efforts to assist owners/occupants they have developed various registration forms to be completed by owners and operators.

To date the Health Department has been well received by the owners and operators and they are hoping to continue to build this working relationship. The Health Department is trying to help the property owners get everything in order to meet compliance with regulations. This entails registration of any commercial composting operations.

### **Coastal Dunes**

As part of a plan review for the proposed septic repair for the Skaket Beach facilities, questions on the interpretation of a wetland have come to light. The issue was raised when it was discovered that the Skaket Beach parking lot is located in a Coastal Dune area.

The Orleans Board of Health Regulation defines a wetland is as follows (in part):

Wetland - (as defined in Title 5, 15.002 and the Orleans Conservation Commission's Wetland Protection By-Law) – Any natural or man-made stream, pond, lake, wetland, coastal wetland, swamp or other body of water and shall include wet meadows, marshes, swamps, bogs and areas where groundwater, flowing or standing surface water or ice, provides a significant part of the supporting substrate for a plant community for at least five months of the year.

Swamp shall mean areas where groundwater is at or near the surface of the ground for a significant part of the growing season or where runoff water from surface drainage frequently collects above the soil surface.

Coastal wetland shall mean any bank, marsh, swamp, flat or other lowland subject to tidal action.

The Conservation Commission definition of a wetland includes items such as coastal dunes, areas subject to coastal flooding and other resources not described in Title 5 and the Orleans Board of Health regulations.

Mr. Canning has informed the Town that a variance is required for the Skaket Beach septic system; however it is his opinion that the Board of Health should review the matter of the definition of a coastal wetland. He recommended that he meet with Ginny Wood to consider the interests of the Conservation Commission and to eliminate any conflict or overlap in the definition of a wetland.

It was pointed out that the definition of a wetland should be the same as the Conservation Commission. However this presents a challenge to the professional staff because the Conservation Commission obtains its definition from the Wetlands Protection Act and the Health Department derives its definition from Title 5, and it might not be possible to reconcile all differences.

## **Hearings**

### **15 Orissa Drive**

This hearing will be heard on March 19, 2009.

### **24 Briar Springs Road**

Ms. Laura Schofield, of Schofield Brothers of Cape Cod, representing Tom Hague III Builder, Inc. for Brown, the owner of the property at 24 Briar Spring Road, explained the proposed alteration to an existing 1978 Code system. Currently on the property, there is a house and detached garage with a second floor. The second floor of the garage is to be converted from open storage to a game room and bathroom. Plumbing from the garage will need to be connected to the existing septic system comprised of a 1000 gallon septic tank, distribution box, and single leaching pit, which has been recently inspected and passed the Title 5 inspection. This system was designed for four bedrooms. Originally, the house did have four bedrooms, but two of them have been combined resulting in a three-bedroom house. The Building Inspector requires a deed restriction that the new room above the garage is not a bedroom.

Mr. Canning reiterated that this is a request to grant approval to allow addition of another building to a 1978 Code septic system.

**In the matter of 24 Briar Springs Road, findings are:**

- **There is a three-bedroom dwelling that was originally a four-bedroom dwelling with a septic system that was approved for a four-bedroom dwelling.**
- **The septic system was inspected and found to be in good working order.**
- **The current request stems from the plan to convert a storage room above a garage into a play room, with which there will be a bathroom, but one does not have a shower. Because of its size, this room is not classified as a bedroom and shall not be used as a bedroom.**

**On a motion by Dr. Schneider and seconded by Ms. Christie, the Board of Health voted to approve the request as stated.**

**This approval is conditioned on the following:**

- **There will be a deed restriction recorded with the Registry of Deeds that this room will never be considered to be a bedroom.**

**The vote was 4-0-0.**

### **8 Burning Bush Lane**

Mr. Roger McAdams, future owner, was present representing Marian Brown, the owner of the property at 8 Burning Bush Lane. Attorney George Cavanaugh is representing Mr. McAdams in the purchase of the property.

Attorney Cavanaugh explained that the house was built in 1981 and had a Title 5 septic system installed

for a two-bedroom house. One of the two bedrooms has a portable divider which allows the room to be divided into two bedrooms, thereby resulting in a three-bedroom dwelling. To meet the requirement in a property sale, the septic system was inspected and it was determined that it has a design flow of 330 gallons per day, sufficient for a three-bedroom house. Mr. McAdams is asking the Board of Health to consider this a three-bedroom house since the system has capacity for a three-bedroom dwelling.

Mr. McAdams reported that the house was originally designed to be a three-bedroom house. The lot is 40,000 square feet, sufficient for a four-bedroom dwelling. He also noted that the current owner has consistently used it as three bedrooms.

Mr. Canning explained that the Health Department received an Inspection for Sale report indicating three bedrooms. However, the town records show that it was constructed as a two-bedroom house. This discrepancy must be resolved before the sale can be completed. He reviewed the building permit and it shows the guest room that can be divided by a folding partition providing privacy to another room. Both rooms have adequate square footage and light and ventilation. He showed Board members some photos of the partition both open and closed.

Board members questioned that the septic system is sufficient for a three-bedroom home. Mr. Canning explained that the plan shows soil test results, but doesn't show much detail around the leaching pit. They discussed whether there is any sign of gravel around the leaching pit, to which Mr. Canning responded that the majority of pit is in the elevation of sand and clay. It was noted that there has been no problem with the leach pit and there may have been a clerical error in 1981 when the house was built. There was discussion of the implications of financing for Mr. McAdams. Attorney Cavanaugh explained that his financing is dependent on the house classified as a three-bedroom dwelling, so he is seeking a finding of three bedrooms to justify the appraisal.

Mr. Canning explained that the town records show a two-bedroom dwelling and the Health Department does not have the authority to decide whether it has two or three bedrooms. There is no evidence in the records to determine that the septic system has the capacity for three bedrooms.

Attorney Cavanaugh offered that the septic inspector indicated on the Inspection Report that it is a three-bedroom house with septic system capacity of 330 gallons per day.

It was noted that the original building plans showed the partition.

**In the matter of 8 Burning Bush Lane, findings are:**

- **The house was built 1981.**
- **The original plans clearly indicated that one of the bedrooms had a partition and therefore, could be used as two bedrooms. There is a third bedroom as well.**
- **This has functioned for thirty years with apparently no problem.**
- **The sewage system, to the best of our knowledge, has capacity for three bedrooms and has functioned with no difficulties.**

**On a motion by Dr. Schneider and seconded by Ms. Christie, the Board of Health voted to recognize that this house was built in 1981 and was built as three bedrooms and is a three-bedroom home. It shall be classified as a three-bedroom dwelling henceforth. The vote was 4-0-0.**

**Correspondence and Old or New Business**

**8 – 1 A Compost Facilities Notification Form** had previously been distributed to the Board members for review and discussion. This was discussed during the Health Agent's Report.

**8 – 2 A Nutrient Management Regulations Informational Sheet** had previously been distributed to the Board members for review and discussion. Mr. Canning reported that he has had inquiries about the regulations. It was the consensus of the Board members that the document will be helpful to those re-

questing information about the regulations.

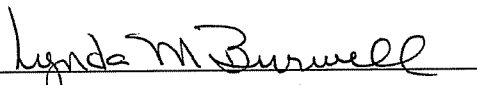
8 – 3 A letter from the Mass. Dept of Public Health regarding the **Swimming Pool Variance for Old Colony Village Condominium at 42 Old Colony Way** had previously been distributed to the Board members for review and discussion. Mr. Canning will write to the association to remind them that they are under order to repair the pool. Board members discussed that the Board has acted appropriately to protect the public health.

8 – 4 A memo from Mr. Canning to the Town Administrator regarding the **Noise By-Law** had previously been distributed to the Board members for review and discussion. Mr. McGrath reported on the discussion at the Board of Selectmen's meeting and the question whether garbage and refuse haulers should be exempt from the Noise By-Law. At the conclusion of discussion the Board of Selectmen included an exemption for them in the matter of public safety.

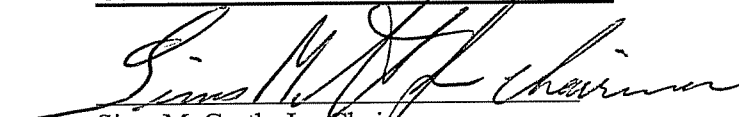
### **Adjournment**

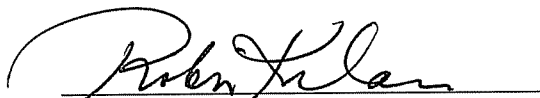
**On a motion made by Dr. Schneider and seconded by Dr. Davis that there being no further business to come before the Board, it was voted to adjourn this meeting of the Orleans Board of Health at 2:52 p.m. The vote was 4-0-0.**

Respectfully submitted,

  
Lynda M. Burwell, Board Secretary

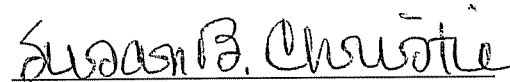
### **ORLEANS BOARD OF HEALTH**

  
Sims McGrath, Jr., Chairman

  
Robin K. Davis, Vice Chairman

  
Jan Schneider, M.D.

Excused  
Augusta F. McKusick

  
Susan B. Christie

Date Approved: March 19, 2009