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TOWN OF ORLEANS
TOWN CLERKS OFFICE

TOWN OF ORLEANS - BOARD OF HEALTH

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MINUTES OF MEETING

March 19, 2009

Chairman Sims McGrath called a meeting of the Board of Health to order at 2:00 p.m. on Thursday, March 19, 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. Board of Selectmen Liaison Mark Carron.

Excused: Augusta McKusick

Public/Press

There was no one present for Public or Press.

Mr. McGrath reported on a presentation by the Cape Cod Water Protection Collaborative held on March 17, 2009 at the Orleans Town Hall regarding Smart Growth and Sewers. Ms. Christie announced that there is a supplement to the Blue Book prepared by the Orleans Pond Coalition.

Approval of Minutes

The minutes of the Board of Health meeting held on March 5, 2009 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 approve, as amended, the minutes of the meeting of the Board of Health held on March 5, 2009. The vote was 4-0-0.

The minutes of the Board of Health meeting held on April 7, 2005 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 April 7, 2005. The vote was 3-0-1. Mr. McGrath abstained from this vote because he was not present at that meeting.

The minutes of the Board of Health meeting held on October 6, 2005 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, as amended, the minutes of the meeting of the Board of Health held on October 6, 2005. The vote was 3-0-1. Mr. McGrath abstained from this vote because he was not present at that meeting.

Health Agent's Report

Mr. Canning reported on the following:

Permits

Temporary Food Permits

The **Brewster After-School Child Care Programs** will hold a Family Fun Fair on March 21, 2009 from 9:30 a.m. to 1:30 p.m. to be set up in the cafeteria at the Nauset Regional Middle School.

Food will include prepackaged snacks, juice packs, water bottles, and whole fruit (apples, bananas and oranges). The food sources will include BJ's, Stop & Shop, and Trader Joes. There will be no bare hand contact with ready-to-eat foods; plastic gloves will be used.

On a motion by Dr. Schneider and seconded by Ms. Christie, the Board of Health voted to approve a Temporary Food Permit for the Brewster After-School Child Care Program to have a Family Fun Fair on March 21, 2009 at the Nauset Regional Middle School cafeteria. The vote was 4-0-0.

The Orleans Cultural Council will hold a Youth Art Show Reception on Friday, March 20, 2009 at the Orleans Town Hall

Food will included packaged cookies, punch consisting of frozen juices and sparkling water mixed in the Town Hall employee lounge. The food sources will include local supermarkets. There will be no bare hand contact with ready-to-eat foods; plastic gloves will be used.

On a motion by Dr. Schneider and seconded by Dr. Davis, the Board of Health voted to approve a Temporary Food Permit for the Orleans Cultural Council to hold a Youth Art Show Reception on Friday, March 20, 2009 at the Orleans Town Hall. The vote was 4-0-0.

Rabies Baiting

The USDA is proposing an oral rabies vaccination program for the spring and fall of 2009. The Town of Orleans is scheduled to be included in this baiting program.

The baiting will be done using the traditional vehicle-based distribution, helicopter distribution for over the Cape Cod National Seashore property, and bait stations located on Town-owned property that will be fitted with automatic cameras. The bait station method has not been employed in Orleans previous to this season.

The proposal also includes trapping along roadsides and on Town-owned property for the purpose of tracking the effectiveness of the program. The targeted animals will be live caught in box traps, anesthetized, and then blood, and tooth samples will be taken to be tested for the status of the vaccination. The animals will be released the same day, and in the same area where they were captured.

This proposal will be presented to the Board of Selectmen for approval.

Rabies Clinic

The Board of Health is sponsoring a Rabies Clinic for cats, dogs and ferrets on Saturday, March 28, 2009, from 9:00 a.m. to 12 noon at the Animal Hospital of Orleans, 65 Finlay Rd, Orleans, MA. Cats and ferrets must be in a carrying case and dogs must be on a leash.

The vaccination fee is \$10 per animal and will be administered by Dr. Karen Bohon of the Animal Hospital of Orleans. State law requires that all dogs, cats and ferrets, age six months or older, must be vaccinated against rabies. Based on previous vaccination status, immunizations are valid for one or three year periods. Proof of previous vaccination, within the past year, must be provided to receive a three year vaccination and certificate.

The Health Department will be advertising this clinic via posters, press releases, and newspaper advertisements.

Orleans Yacht Club

On March 13, 2009 the Health Department received a letter from the DEP regarding the Orleans Yacht Club's application for use of the White Knight Technology at 39 Cove Road. The DEP wrote that it cannot approve the request because the existing system is failing to protect public health, safety, and the environment which triggers one of Title 5's failure criteria. Per a conversation with the DEP, because the leaching area has failed it must be replaced, the White Knight cannot be used if a site investigation indicates that the existing soil absorption system must be removed and replaced prior to the installation of the system. Representatives of the Yacht Club will be meeting with the DEP to appeal the decision.

Mr. Canning discussed the inconsistency of the Title 5 approval of the White Knight technology.

Hearings

15 Orissa Drive

Mr. Timothy Brady of East Cape Engineering, Inc. was present representing David Olson and Lauren Hiestand, owners of the property at 15 Orissa Drive. Mr. Brady explained that upon inspection, the leaching pit was found to be at groundwater level. He noted that there is no new construction proposed at this property. The proponents request the approval of a new septic system to be located on an adjacent lot because there is no room for it on the dwelling's lot because of its proximity to a coastal bank. He reviewed the specific variances required for this approval. Lot 2 (also owned by the proponents) will be subject to an easement so the septic system for Lot 1 can be located on the adjacent lot. A house could still be located on Lot 2 if necessary without infringing on the Lot 1 septic system. This proposal has received Conservation Commission approval.

Mr. Canning commented on the variance requests. He noted that the components are in the same place as previously approved but the reserve area is now located on the vacant lot. In 2004, the Board of Health reviewed the plans and approved several variances. He noted that although this is an old order to repair, the proponent has been in constant contact with the Health Department throughout this process.

Board members discussed the location and protection of the water line.

Mr. Robert Heath, abutter and owner of Lot 14, asked if the leaching system is west of the house to which Mr. Brady confirmed that it is.

Ms. Christie expressed her displeasure with the fact that there could be two septic systems on one lot if another house is built on Lot 2. Mr. Brady explained that another house could be located on Lot 2 without requiring any variances. It was also noted that part of the building encroaches on the roadway to which Mr. Brady explained that no traffic circle exists, it is only on paper.

In the matter of 15 Orissa Drive, findings are:

- **There is an old system with a problem with the current leach pit and it being replaced.**
- **This is a very small lot and geographically it is close to a coastal bank. A variety of issues must be confronted because of the location.**
- **The plan calls for the leaching field to be located in the adjacent lot which is currently an empty lot but is under the same ownership where the three-bedroom house is located.**
- **The variances that are required are that the soil absorption system, distribution box, and reserve soil absorption system area are located on the adjacent lot. The existing septic tank is located 24 feet from the top of a coastal bank where 50 feet are required; therefore, a 26-foot variance is required from the Town of Orleans regulations. The pump chamber is 25 feet from the top of a coastal bank where 50 feet are required; therefore a 25-foot variance is required.**
- **This design allows for siting the soil absorption system outside the 100' buffer zone and outside of the Area of Critical Environmental Concern boundaries.**

Mr. Canning reiterated the difference in variances needed to satisfy the requirements of Title 5 and the Town of Orleans Board of Health Regulations.

On a motion by Dr. Schneider and seconded by Dr. Davis, the Board of Health voted to approve all of the variances requested in the letter from Mr. Brady of East Cape Engineering dated February 25, 2009.

This approval is conditioned on the following:

- **That an easement must be recorded with the Barnstable County Registry of Deeds for the construction, maintenance, and inspection; and that a copy of that easement must be submitted to the Health Department.**

- **The Orleans Water Department must approve the proposed construction crossing the water main.**

The vote was 4-0-0.

192 End of Skaket Beach Road – Town of Orleans

Ms. Stephanie Sequin of Ryder & Wilcox was present representing the Town of Orleans to replace the septic system at Skaket Beach. Currently there is a system for the bathhouse installed in 1972 consisting of a 1500 gallon tank and two leaching pits and the snack bar has another system consisting of two cesspools. The proponent proposes to combine both buildings into one common system, providing a grease trap for the snack bar and two 7000 gallon septic tanks going into a 3500 gallon per day leaching area in the paved parking area. However, they want to keep it over 100 feet from the beach and top of bank. The entire area is considered a coastal dune. Title 5 does not require setbacks to a coastal dune, but the Orleans Board of Health Regulations require that septic tanks be 60 feet and the leaching system 100 feet from a coastal dune necessitating variances as outlined in the Ryder & Wilcox letter dated March 5, 2009. This proposal has been approved by the Conservation Commission with an Order of Conditions. Ms. Sequin expressed that this proposal is a great improvement over system that is currently there. She noted that there is no category in Title 5 that determines requirements for a new system at a beach location. Prior water readings were used to determine usage and design flow of approximately 3400 gallons per day.

Mr. Canning noted that MDEP must approve the design flow and may consult with the Health Department; however, Ryder & Wilcox has already applied for that approval and is waiting for notification.

Dr. Schneider asked if there has been any problem with the Nauset septic system. Ms. Sequin confirmed that it is operating successfully since it was installed in 2000.

In the matter of 192 End of Skaket Beach Road, findings are:

- **The site for the Snack Shack and bathhouse is situated within a coastal dune and several wet-land resource areas. For example, coastal beach and bank, and land are subject to storm flow.**
- **The proposed soil absorption system, which will be two septic tanks in series, a pump chamber, and a pressure dosed leaching field is an upgrade from the SDS presently in place.**
- **A grease trap will be installed for the Snack Shack which presently has a sink flowing into two cesspools.**
- **This is a huge improvement over the current system of cesspools with respect to location, elevation, and capacity.**

On a motion by Ms. Christie and seconded by Dr. Schneider, the Board of Health voted to approve the variances for the construction of a septic system at Skaket Beach as determined on the plan dated February 25, 2009 prepared by Ryder & Wilcox. The variances approved are as follows:

- **The proposed septic tanks and pump chamber shall be located within a coastal dune where a 50 foot setback is required. A 50 foot variance is requested.**
- **The proposed leaching facility shall be located within a coastal dune where a 100 foot setback is required. A 100 foot variance is requested.**

This approval is conditioned on the following:

- **The approval of MDEP is required to use Alternative Design Flow method to determine the size of the proposed sewage disposal system.**
- **Approval of the Orleans Conservation Commission is required (which has already been obtained).**
- **The grease trap must be inspected monthly and cleaned out by a licensed septage hauler at**

least every three months.

The vote was 4-0-0.

In answer to a question by Dr. Schneider about the water usage in the outside showers, Ms. Sequin confirmed that the shower water usage was separately metered during last season.

5 Pine Needle Way

Mr. Stuart Miller, owner of the property at 5 Pine Needle Way, was present to address his request to use a second-floor bedroom as a legal bedroom it has been used since the house was built in 1956. The septic system was designed for a three-bedroom house and passed inspection prior to his purchase in 2007 and passed again this month in preparation for sale.

Mr. Canning explained that there is a finished room on the upper level of the dwelling. A 1989 repair of the septic system was for a two-bedroom house with potential for a third bedroom. He met Mr. Miller on site and observed a finished room, four inches short of a seven foot ceiling. The request is for a variance to Chapter II of the Housing Code which allows a Board of Health to vary the requirement for a seven foot ceiling. Mr. Canning noted that 100 percent of floor/ceiling area is less than seven feet being six feet eight inches for about 50 percent of the room. The room does meet the criteria for light and ventilation.

Board members questioned the percentage of floor area which Mr. Canning replied that the ceiling must be 25 percent of the floor area.

In the matter of the residence at 5 Pine Needle Way, findings are:

- **The house is currently being used as a three-bedroom dwelling and there is a note on the plan that it was anticipated to be a three-bedroom house.**
- **The septic system was designed to have capacity for a three-bedroom house.**
- **This house was constructed in 1956 under different building codes and that the head-room at that time was standard.**

On a motion by Dr. Davis and seconded by Dr. Schneider, the Board of Health voted in the matter of 5 Pine Needle Way to approve the variance to Chapter II of the Housing Code of four inches to the height of the ceiling of a bedroom.

This approval is conditioned on the following:

- **The owner must provide a statement from an engineer that the septic system is adequate for a three-bedroom house.**

Ms. Stephanie Sequin, of Ryder & Wilcox (also present during this hearing) confirmed that the septic system is adequate for a three-bedroom house. It has a 1000 gallon septic tank and a standard 6 foot by 6 foot leach pit with stone around it with adequate capacity in the septic tank for a three-bedroom house. The capacity of the leaching pit is 425 gallons per day providing more than enough capacity for a three-bedroom house.

The vote was 4-0-0.

Mr. Canning explained that this variance decision by the Orleans Board of Health must be recorded with the Barnstable County Registry of Deeds and a copy returned to the Health Department for their files.

Correspondence and Old or New Business

9 – 1 A letter from Mass. Department of Agricultural Resources regarding a **Nomination of Inspector of Animals** for Orleans had previously been distributed to the Board members for review and discussion. Duane Boucher has been Inspector of Animals with Mr. Canning and Erika Woods as alternates.

On a motion by Dr. Schneider and seconded by Dr. Davis, the Board of Health voted to approve

Duane Boucher as Inspector of Animals with Mr. Canning and Erika Woods serving as alternates. The vote was 4-0-0.

9 – 2 A report on the seven month operation of the **Soil Air System at the Second District Courthouse** had previously been distributed to the Board members for review and discussion. Mr. Canning observed that there is some increase in ponding in the leaching pits evident in this report. It would be prudent to follow this further as the water usage increases. Board members discussed the energy used to run the blowers to which Mr. Canning noted they are very small blowers not requiring much power.

9 – 3 A letter from Andrew K. Murphy, president of Hurricane Hugo, Inc. regarding the **Coast Restaurant** had previously been distributed to the Board members for review and discussion. Mr. Canning reported that the septic system was designed for a 100-seat restaurant but not the 34 seat bar. It has been continuously licensed by the Board of Health since 1985 for 130 to 137 seats. In 1989 it was found that the owner was using the upper area for parties, and the Board allowed them to use either the bar area or the dining room as long as they closed off the alternate area. Sale of property in 2005-6 raised this issue again. The proposed new owner is not planning any change of use or increase in flow and would like to be able to maintain it as a 136-seat restaurant in the future. Board members discussed that the existing septic system has enough capacity to handle it. It was noted that this property is located in the area that might initially be sewered; and it was suggested that Mr. Canning notify the new owner that if the system fails it would have to be replaced with a system capacity for 136 seats.

On a motion by Dr. Schneider and seconded by Ms. Christie, the Board of Health voted to approve the request of Hurricane Hugo confirming that the letter sent previously when the Coast was purchased in 2006 be brought up to date for the new ownership and allow them to maintain the conditions already discussed. The vote was 4-0-0.

33 Bay Ridge Lane – Continuation of Show Cause Hearing 3:00 p.m.

Mr. Canning distributed a letter from Coastal Engineering dated March 19, 2009 which outlined the projected use of the property with a total flow of 578 gallons per day which may be revised as the building is renovated. Mr. Filteau would like to continue the use of the existing two apartments, use of the existing music store, use of the existing auto body shop, and to finish space in the existing building for music student performances. Coastal Engineering expects to design a septic system without requesting any variances. They have recently inspected the leach pit on March 18, 2009 and have notified the owner that it must be pumped. They expect to have a design plan within three to four weeks.

Board members discussed that the storage building to be removed is storage for the music company and part of Starfish Auto Body.

On a motion by Dr. Schneider and seconded by Ms. Christie, the Board of Health voted to continue this hearing to May 7, 2009 at 3:00 p.m. The vote was 4-0-0.

Correspondence and Old or New Business (Cont'd.)

9 – 4 A letter from Prime Engineering regarding the **Former Brewster Sand & Gravel Facility** had previously been distributed to the Board members for review and discussion. Mr. Canning reported that they have met the standard for benzene and they have not reached that level since the fall of 2005. Mr. Lou Briganti and Mr. Canning previously wrote to MDEP reminding them that this property is located adjacent to Zone 2 of the Orleans Water Wells. By consensus of the Board of Health Mr. Canning will again write to the state to make them aware of the proximity to the Orleans wells.

9 – 5 A letter from the Orleans Health Department regarding the septic system at 21 Bog Hollow Road had previously been distributed to the Board members for review and discussion. This is a storage building built in 1972 with a series of holding tanks. Mr. Canning reported that the Health Department had required the owner to install an alarm on the tight tank on this property in compliance with Title 5. He outlined the com-

munication with the owner, Bruce Scott Jr. as follows:

Owner	Date	Form of communication	Action/Response
Bruce Scott Jr. May 5, 2008 to present	May 5, 2004	Health Department received a Title 5 Official Inspection Form for the property. The inspector marked that the property is served by two tight tanks in series. The report also states that there is no alarm serving the tight tanks. The inspector concluded that the system passes.	June 22, 2004 Health Department wrote a letter stating that it has reviewed and accepted the report and will be taking no action.
	July 8, 2008	Health Department received a Title 5 Official Inspection Form for the property. The inspector marked that the property is served by two -1,000 gallon septic tanks, with no alarm. Tanks are structurally sound; there is a portable toilet on the site as well. The inspector concluded that the system passes.	August 25, 2008 the Health Department issued an order to Mr. Scott requiring him to install an alarm system in compliance with Title 5. Order was received on 8-28-08. No Response
	December 12, 2008	Health Department issued a second notice to Mr. Scott informing him that he remains in violation of the August 28, 2008 order	Certified Mail Unclaimed
	January 12, 2009	Health Department issued a notice to Mr. Scott informing him that he remains in violation of the August 28, 2008 order.	Order was received on January 17, 2009 No Response
	February 23, 2009	Health Department issued a notice to Mr. Scott informing him that he remains in violation of the August 28, 2008 order to repair the septic system. Health Department requested Mr. Scott contact the Health Department in writing and by telephone within 7 days upon receipt of the order. The notice also stated that failure to respond will cause the matter to be brought before the Board of Health which will determine what legal action is required to resolve these violations.	Order received on February 27, 2009. No Response

An alarm was ordered to prevent an overflow of the tight tank. The owner has been unresponsive although three of the four of the Return Receipts from Certified Mail have been signed and received. Mr. Canning described the building as a warehouse located near wetlands on an isolated road. There is high groundwater which comes half-way up the septic tanks. Code requires that an alarm be installed at 3/5 the level of a tight tank to allow time to have it pumped before it overflows. Board members discussed the expense of installing an alarm. Mr. Canning commented that the tanks are not leaking and groundwater is not leaking into the tank. Board members expressed concern that the property is located in a wetland and discussed the construction of the tight tanks installed in 1972.

On a motion by Dr. Schneider and seconded by Dr. Davis, the Board of Health voted to request that the owner of 21 Bog Hollow Road attend a Show Cause Hearing because of the repeated failure to respond to communications from the Health Department. The vote was 4-0-0.

On a motion by Dr. Schneider and seconded by Ms. Christie, the Board of Health voted in the matter of 21 Bog Hollow Road to schedule a Show Cause Hearing on April 16, 2009. The vote was 4-0-0.

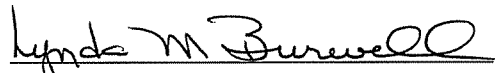
9 – 6 A letter from Mass. Department of Environmental Protection regarding the **Approval of Prescribed Burns by the National Park Service on the Cape Cod National Seashore** had previously been distributed to the Board members for review and discussion.

9 – 7 A letter from Orleans Health Department regarding **29 Giddiah Hill Road – Daniels Recycling Company, Inc.** had previously been distributed to the Board members for review and discussion. Mr. Canning reported that the repairs to deficiencies noted on the February 19, 2009 inspection report have been completed. He also noted that the Daniels' expansion project has been put on hold; however the Health Department had not yet received an application.

Adjournment

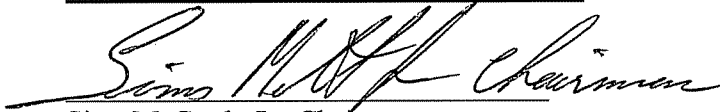
On a motion made by Dr. Schneider and seconded by Dr. Davis that there being no further business to come before the Board, it was voted to adjourn this meeting of the Orleans Board of Health at 3:30 p.m. The vote was 4-0-0.

Respectfully submitted,

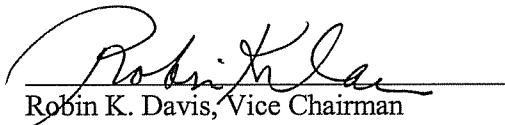


Lynda M. Burwell, Board Secretary

ORLEANS BOARD OF HEALTH



Sims McGrath, Jr., Chairman

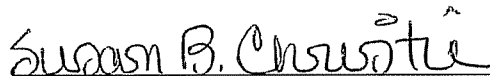


Robin K. Davis, Vice Chairman

Jan Schneider, M.D.

Excused

Augusta F. McKusick



Susan B. Christie

Date Approved: April 2, 2009