

K. Davis Asst
TOWN OF ORLEANS
TOWN CLERKS OFFICE

TOWN OF ORLEANS - BOARD OF HEALTH

MINUTES OF MEETING

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April 16, 2009

Chairman Sims McGrath called a meeting of the Board of Health to order at 2:00 p.m. on Thursday, April 16, 2009 in the Skaket Meeting Room of the Orleans Town Hall.

Present: Chairman Sims McGrath, Robin Davis, Ph.D., Augusta McKusick, Jan Schneider, M.D., Susan Christie; and Erika Woods, Assistant Health Agent. Also present, Mark Carron, Liaison from the Board of Selectmen.

Agenda Item I – Public/Press

Mr. Steven Preu of 42 Old Colony Way in Orleans addressed the Board of Health expressing his opinion regarding the swimming pool situation at Old Colony Village. He was concerned that Mr. DiMonte, property manager for the condominium association, has again requested an extension on the requirement to repair the swimming pool.

Agenda Item 10 – Approve Minutes

The minutes of the Board of Health meeting held on April 2, 2009 had previously been distributed to the Board members for review.

On a motion by Dr. Davis 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 2, 2009. The vote was 3-0-2. Dr. Schneider and Ms. McKusick abstained because they were absent from that meeting.

Agenda Item 13 – Old and New Business/Review Correspondence

13 – 4 A letter from the **Cape Cod Commission regarding the proposed expansion of Daniels C&D Facility** had previously been distributed to the Board members for review and discussion. The Commission requested confirmation from all Town departments that the project has been withdrawn from all boards that would have been involved in granting a permit. The Health Department had not received application to date, therefore a letter should be sent to the Commission explaining that there was no application to be withdrawn. It was recommended that the Health Department advise other Town departments of this action.

13 – 3 A letter from MassDEP approving an **Alternative Design Flow for a Title 5 System at Skaket Beach Bathhouse and Snack Bar with conditions** had previously been distributed to the Board members for review and discussion. The required conditions may present obstacles by requiring that storm water runoff must be directed to leaching catch basins. This expense is not included in the present budget for this project.

Agenda Item 2 – Variance Request –210 Rock Harbor Road

Ms. Stephanie Sequin of Ryder & Wilcox was present to represent Mr. Steve Ellis, owner of the property at 210 Rock Harbor Road. Mr. Ellis was also present during the hearing. She explained that because of a property transfer, it was discovered that a single cesspool on the property is located very near Rock Harbor Creek and must be upgraded. The property is basically surrounded by resource areas. Ms. Sequin presented a proposal to locate a new soil absorption system in the backyard closer to a ditch in order to maximize the 100 foot setback to the Creek. Ms. Sequin outlined the variances requested from the Orleans Board of Health Regulations and explained that the bottom of the SAS will be located 5.1 feet from the adjusted groundwater elevation. There are no plans to renovate the current three-bedroom house located on the property. The Conservation Commission has approved this proposal with an Order of Conditions.

Ms. Woods remarked that this proposal provides a full-size leaching area and installs the leaching system 5.1 feet above the adjusted groundwater level. She noted that there have been no test holes conducted in the

primary area so any approval would be contingent upon satisfactory test results. She also noted that there is a workshop/utility room off the kitchen of the dwelling that does not provide sufficient light and ventilation to be considered a bedroom. She requested that Ms. Sequin comment on the configuration of the leach area because of her concern about even flow into all sections. Ms. Sequin explained the mechanics of how the effluent will flow evenly throughout the system.

On a motion made by Ms. McKusick and seconded by Dr. Schneider, the Board of Health voted in the matter of 210 Rock Harbor Road finding that:

- **This property of 1.5 acres is served by a single cesspool.**
- **The structure is not composed of more than three bedrooms. There is a small work area off the kitchen that is not "habitable" because of inadequate light and ventilation.**
- **The property is surrounded by wetlands; vegetated as well as a stream.**

Two variances are approved:

- **A variance of 13 feet to a vegetated wetland. Eighty-seven feet are provided where 100 feet are required.**
- **A variance of 22 feet to a drainage ditch. Seventy-eight feet are provided where 100 feet are required.**
- **A 100 foot setback to the more sensitive area near the creek has been preserved.**

This variance is conditioned upon the following:

- **Test holes must be conducted in the area where the new leach area is to be established.**

The vote was 5-0-0.

Agenda Item 3 –Approval Request – 1 Standish Road

Ms. Stephanie Sequin of Ryder & Wilcox represented Mr. David Strickler and Ms. Kathy Patison, owners of the property at 1 Standish Road and distributed floor plans of the existing two-bedroom house on the property. Plans for renovation of the garage into a studio/office were previously distributed. The property is served by a 1978 Code septic system installed in 1990 consisting of a 1000 gallon septic tank and a leaching pit with capacity of 487 gallons per day which was inspected in March, 2007 for a property sale. The proposed toilet and sinks in the studio/office would be connected to the existing septic system. Because there is no bath or shower proposed, this renovation does not meet the requirement of the Housing Code to be habitable space. The Building Commissioner requires a deed restriction because of zoning issues that the new space cannot be used as a guest house or habitable space.

Ms. Woods commented that as required by the State Sanitary Code, that toilet, bathtub and shower facilities must be accessible from within a facility to be habitable as a bedroom. She expressed concern because there is so much space available with a toilet and sink available. This office space will be used as a "home office". There is also concern about where the water line is located with reference to the new septic line to the septic tank.

Board members discussed the total property acreage and the proposed three sinks in the renovation. Ms. Sequin explained that the outside sink would be part of a potting shed while the freezer is located adjacent because there is no space in the house. This area would be protected by a roll-up garage door.

On a motion made by Ms. Christie and seconded by Ms. McKusick, the Board of Health voted in the matter of 1 Standish Road finding that:

- **The existing garage is to be converted to a studio/office with a half bath.**
- **The property currently supports a two-bedroom dwelling on an 18,600 square foot lot.**
- **A new bathroom will not have bathing facilities so the studio/office will not be considered a bedroom by the current Orleans Board of Health Regulations.**
- **The present septic system, which was built in 1990, was inspected on March 6, 2007 and found to be adequate for four bedrooms and passed unconditionally.**

- A new water line will run from the existing to the new office/studio.
- A new waste pipe will be installed from the new office/studio to an existing septic tank.

Based on these findings, the Board of Health approves the proposed plan as shown.

Conditions are:

- Water Department approval will be necessary for placement of the new line to be sure that the sewer line does not cross the water line.
- No work shall occur within 100 feet of the Top of the Bank without Conservation Commission approval.
- The Building Department has required that a deed restriction be recorded on the proposed building project that the new space cannot be used as a bedroom.

The condition requiring Water Department approval was amended by Dr. Schneider to read "Should it be necessary for the proposed sewer line connection to cross the water line, it must be approved by the Water Department." This amendment was accepted by Ms. Christie and seconded by Ms. McKusick.

The vote was 5-0-0.

Agenda Item 4 –Hearing Request – 13 Route 28 – Cove Condominium

Mr. Tim Brady of East Cape Engineering represented the Cove Condominium owners of the property at 13 Route 28. He discussed that the septic systems have recently been inspected and have several requirements for upgrade or replacement. Septic system No. 1 is a cesspool that is included in a plan for replacement, part of a recently-approved larger system. System No. 2 is an old Code Title 5 system where the inlet to the septic tank is lower than the outlet from the septic tank. However unusual, this system has been working properly for many years. System No. 3 is also an old Code Title 5 system where, because of landscaping and walkways, the inlet has not been exposed but the outlet and leaching system have been inspected and the system is working properly although some of the covers are more than six inches below grade. Also an old Code Title 5 system, septic system No. 4 includes a pump chamber and the alarm is not working properly. This system passed inspection and is part of the larger system to be constructed. System No. 5 is an old cesspool with overflow cesspools which is also part of a proposed larger system. With the exception of repairing the alarm system on No. 4, Mr. Brady requested that the Board allow extension of the Order to Replace/Repair these systems until the sewer system is available. The condominium owners have an escrow account with \$200,000.

Ms. Woods clarified that currently system No. 2 does not have an Order to Repair and Mr. Brady corrected his letter of March 12, 2009.

Board members discussed that many proponents have requested extension of repair orders until "such time as town sewers are available", and what is a reasonable amount of time to allow?

In the matter of 1 Standish Road, findings are:

- This current presentation is based on a routine inspection every three years as required for condominiums. In the context of this inspection it was revealed that:
 - No. 1 is a cesspool that must be replaced under current regulations. The question is whether to delay that repair, with a series of inspections to ensure its integrity, while awaiting a better system like a sewer or if a greater problem arises.
 - No. 2 is a Title 5 system with interesting hydraulics in that the inlet is lower than the outlet, but the system seems to be working satisfactorily.
 - No. 3 is another old Code Title 5 system where the inlet cannot be seen because of some problem with the inspection ports, however, it is working well. The request is that everything should be left as it is, in spite of the difficulty of inspection because of changes in geography.

- No. 4 is another old Code Title 5 system which has alarms that need to be fixed and these will be fixed.
- No. 5 is another cesspool with some overflow pools, which again, is part of an existing plan for replacement, but is now on hold pending the possibility of a sewer.

On a motion by Dr. Schneider and seconded by Ms. McKusick, the Board of Health voted to continue the requirement of immediate replacement of anything other than the alarms. The owner must ensure that there is a quarterly inspection of System No. 3, as well as raise the outlet covers so that adequate inspection can be performed. The other systems would continue to be inspected once every three years. The inspections would need to have a structural component as well as a functional inspection.

Additional findings were suggested by Ms. McKusick as follows:

- There are five septic systems, and Systems 1, 4, and 5, are all going to be part of a larger system that has previously been brought before the Board of Health.
- There is an escrow account and it must be dedicated for septic repair or replacement only, not for general maintenance and repair.

It was further clarified by Mr. McGrath that the structural inspection will be conducted on Systems 1 and 5, and that it will be completed within 60 days. The alarm repair and covers will be raised also within 60 days.

The vote was 5-0-0.

Agenda Item 5 –Hearing Continuation – 42 Old Colony Way – Old Colony Village

Mr. Ralph DiMonte, property manager of Old Colony Village located at 42 Old Colony Way, represented the Old Colony Village Association, condominium owners.

Ms. Woods introduced the issues regarding this property noting that in May, 2008 the Health Department inspection of the swimming pool noted that the main drain of the swimming pool was not operational. The Health Department issued an order to have the pool come into compliance with the state regulations. The condominium association appealed that order and that appeal was considered by the Board of Health in October, 2008. The condominium association also appealed the order to the state Department of Health which was subsequently denied on February 21, 2009. Mr. DiMonte requested a hearing for an extension of the Order to Repair through the 2009 season.

Mr. DiMonte explained the issues as a result of the Order to Repair and what will be involved. He also explained the safety precautions to be taken to protect the users of the pool during the 2009 season.

Board members questioned the timeline for the repair, to which Mr. DiMonte outlined that he would meet with contractors, his board, and obtain permits. He also listed methods of repair from several different pool contractors. In response to a question about the opinion of the condominium board, Mr. DiMonte noted that the funds for pool construction are available and they are ready to repair the pool.

Ms. Woods explained that the Health Department would need to review the plans to ensure that they meet state regulations, and an engineer must design the plans to meet structural requirements.

Ms. McKusick suggested that the Board not change the Order to Repair and not issue a permit to open the pool unless the applicant comes forward with some documented evidence that it is physically impossible to complete the ordered repair and shows some real progress before the beginning of the 2009 season. Dr. Schneider emphasized that Mr. DiMonte was notified by the state DPH in February, 2009 of the variance denial and he expressed his concern that the state noted that *the applicant cannot prove that the same degree of protection can be achieved*, therefore exposing a degree of liability for all parties.

On a motion by Dr. Davis and seconded by Dr. Schneider, the Board of Health voted in the matter of the swimming pool at Old Colony Village located at 42 Old Colony Way, finding that:

- This matter has been under consideration for a long time.

- A variance had been granted in 2008 but was not approved by the state Department of Public Health.
- They are faced with the prospect of continuing the operation so the pool can open in 2009 as it was operated in 2008.

Conditions for allowing a permit to operate to be issued are as follows:

- The condominium association must enter into an agreement with a contractor for the work to be done prior to issuance of a permit to operate the pool this season.
- They must have engineered plans that are acceptable to the Health Agent.
- They must submit a clear timeline for completion of the repairs.
- All this must be submitted to Health Department before opening the pool for this summer season.
- There will be no extension granted for the 2010 season.
- Conditions of operation outlined in the variance hearing held on January 8, 2009 and outlined in the Health Department letter of January 15, 2009 shall continue to be in force.
- Rigorous testing shall be conducted throughout the summer to ensure its safety for use as follows:
 - Orleans Health Department inspections shall be conducted twice per month.
 - Bacteriological testing by Old Colony shall be conducted twice per month.
 - Reinstate previous Board of Health requirements that if any chemicals are added directly to the pool, Old Colony must close the pool for 24 hours and vacuum it before reopening.

The vote was 5-0-0.

Agenda Item 9 – Hearing – 21 Bog Hollow Road – 3:00 p.m.

There was no one present at 3:20 p.m. for this hearing.

Agenda Item 6 – Discussion – 48 Willie Atwood Road

Mrs. Mary Barry, owner (with her husband John) of the property at 48 Willie Atwood Road, requested that the Board of Health remove the condition that there can be no increase in square footage on that property. She explained that several realtors have notified them that the restriction is a deterrent to the sale of the house which is currently for sale.

Ms. Woods addressed that in 1995 the Title 5 Local Upgrade Approval contained a condition that no increase in design flow or square footage of a building would be allowed. The 2006 revision of Local Upgrade Approval states only that no increase in design flow is allowed. However, the Board of Health granted a variance to 48 Willie Atwood Road in 2004 and not a Local Upgrade Approval. This condition was added by the Orleans Board of Health at the time, probably because of its existence in the Local Upgrade Approval section of the earlier version of the Title 5 regulations.

Board members discussed the fact that there was no change in the number of bedrooms, square footage, or increase in the design flow, but the location and existence of groundwater caused them to be cautious in this matter. It was suggested that the proponent obtain some guidance from a designer as to how she could increase the useable space and not have it meet the criteria of a bedroom.

Board members discussed further the fact that by raising the ceiling height (with a dormer) to use existing closet space, the square footage of the home would be increased. There would be no increase in the number of rooms or bedrooms.

It was the consensus of the Board of Health that the proponent should return to the Board for a variance appeal with the following:

- A conceptual drawing (hand drawn) showing that square footage can be increased without an increase in the number of bedrooms.
- The Board of Health would be sympathetic to an application to remove the language stating conditions of no increase in square footage.
- There will continue to be a condition that there will be no change in flow, number of bedrooms, or increase in footprint.

Agenda Item 7 – Approval Request – Roadway Inn

Mr. Mahesh Patel, owner of the Roadway Inn at 48 Route 6A, was present for this hearing with Mr. Jim DeWitt. Mr. Patel would like to be able to serve fresh items in his continental breakfast at the hotel. He explained that all fresh food would be displayed in a covered container with tongs available for reaching for the item. All other service items would be disposable paper plates, napkins, and plastic forks and knives.

Ms. Woods explained that Mr. Patel would like to have a toaster available for his guests so they could have toast and warmed muffins or bagels. He would also like to have cereal in a dispenser that a guest could serve themselves. All other amenities would be in individual containers. Ms. Woods also reviewed the previous variances approved for this property and noted that there is no Certified Food Protection Manager.

Board members discussed whether the individual packets were dated and whether the unwrapped food is disposed each day. Mr. Patel assured the Board members that fresh food is brought out each day. They also discussed the need for a Certified Food Protection Manager.

On a motion by Dr. Davis and seconded by Ms. Christie, the Board of Health voted in the matter of the Roadway Inn to grant an expansion of the menu finding that relief had previously been granted on hand washing and ware washing facilities on site. The vote was 5-0-0.

Agenda Item 8 – Approval Request – Third & Ten LLC

Mr. Dennis Gordon, owner of the Baseball Shop on Main Street, proposes to open a hot dog cart outside on the corner of Old Colony Way and Main Street. He had already applied to the state and had consulted the Fire Department for their requirements.

Ms. Woods reiterated that Mr. Gordon proposes to sell hot dogs, prepackaged chips, snacks, and bottled or canned beverages. There will be no food preparation on the cart. Mr. Gordon will apply the mustard and relish until it is determined there is an appropriate area for a customer to do it.

On a motion by Ms. McKusick and seconded by Dr. Schneider, the Board of Health voted in the matter of Dennis Gordon's Third & Ten LLC, to grant permission to open this hot dog food service establishment with the condition that he get his Food Handler Protection license on May 14, 2009, and that he meets all other local requirements. The vote was 5-0-0.

Agenda Item 9 – Hearing – 21 Bog Hollow Road – 3:00 p.m. (Cont'd.)

There was no one present at 3:20 p.m. for this hearing. There continued to be no one present for this hearing at this point in the meeting.

Ms. Woods explained that Mr. Canning had spoken with Mr. Shaun Smith, a tenant on the property who was to act as agent for Mr. Bruce Scott, the owner of the property. Mr. Smith told Mr. Canning that the owner does intend to install alarms in the tight tanks on the property; however, to date there is no application on file.

Ms. Woods reported on the pumping schedule for the two 1000 gallon tight tanks. It was noted that on several occasions in the past, greater than the combined capacity of 2000 gallons was pumped from the tanks. Board members remarked that because the over capacity was pumped on several dates, this shows evidence of overflow. It was suggested that the Health Agent inform Town Counsel of the situation to determine the appropriate action to be taken by the Board of Health.

On a motion by Ms. McKusick and seconded by Dr. Schneider, the Board of Health voted in the matter of 21 Bog Hollow Road to forward this matter to Town Counsel for his advice on the appropriate action to be taken to rectify this situation. The vote was 5-0-0.

Health Agent's Report

Ms. Woods reported on the following:

License Approval

David J. Birnie Management has applied for Septic Collection & Transportation License.

On a motion by Dr. Davis and seconded by Ms. McKusick, the Board of Health voted to approve a Septic Collection & Transportation License for Mr. David J. Birnie. The vote was 5-0-0.

Mike O'Loughlin has applied for a Septic Collection & Transportation License.

On a motion by Dr. Schneider and seconded by Ms. McKusick, the Board of Health voted to approve a Septic Collection & Transportation License for Mr. Mike O'Loughlin. The vote was 5-0-0.

Sean Delude of Sandy Paws Inc. has applied for a Septic Collection & Transportation License.

On a motion by Dr. Davis and seconded by Dr. Schneider, the Board of Health voted to approve a Septic Collection & Transportation License for Mr. Sean Delude. The vote was 5-0-0.

Food Service Permits

Woodie's Burgers and Fries, to be located at 56 Main Street, has applied for a Food Service Establishment Permit. They are in the process of updating the facilities. In addition to burgers and fries, they will be serving other fried food, etc. They have two Certified Food Protection Managers on staff.

On a motion by Dr. Schneider and seconded by Ms. Christie, the Board of Health voted to approve a Food Service Establishment Permit for Woodie's Burgers and Fries pending opening inspection by the Health Department. The vote was 5-0-0.

The **Orleans Strawberry Festival** would like a rain date in addition to the originally-approved date of Saturday, June 13, 2009, from 10:00 a.m. to 4:00 p.m. The original permit was approved at the April 2, 2009 Board of Health meeting. The proposed rain date would be Sunday June 14, 2009 for the same hours.

On a motion by Dr. Schneider and seconded by Ms. Christie, the Board of Health voted to approve a rain date of June 14, 2009 and the same hours for the Orleans Strawberry Festival. The vote was 5-0-0.

The **Orleans Oral Rabies Vaccine distribution** will take place April 27th thru May 11, 2009. Tuesday, April 28th is the planned distribution of baits by vehicle in Orleans. The area is much smaller this year. Bait stations will also be baited and distributed on town properties and will have baits from April 27th to May 11th. The goal is for them to be well hidden; some are already in place. The USDA will send a list of locations.

The Health Department has received a copy of the **NSTAR Yearly Operation Plan for Vegetation Control Service**. A review of this plan indicates that NSTAR selectively applies herbicides along power line rights of way in Orleans as part of their integrated vegetation management plan. Per the report all herbicides are applied selectively to target the vegetation and are applied by licensed and certified applicators. Per the report all herbicides are registered by the Federal EPA, Mass Pesticide Board, and are recommended for use in sensitive areas by the Mass Pesticide Bureau. Summer foliage treatment is anticipated between June 15th and October 16th. Some areas may not receive treatment and may need Fall application which would occur from Oct 5th to Dec 18th. A copy of the full report is on file in the Health Department office.

Ms. McKusick expressed concern about the use of herbicides in Zone 2/Watershed. It was the consensus of the Board members that a letter should be written to NSTAR outlining the Mass. DEP restrictions for use of herbicides in a watershed area.

Agenda Item 13 – Old and New Business/Review Correspondence (Cont'd.)

Mr. McGrath recused himself from the balance of the meeting so as not to participate in the discussion of Item 13-1.

13 – 1 A letter from Nutter McClennen & Fish LLP regarding **40 and 50 Tom's Hollow Lane**, owned by Thomas and Patricia Kennedy had previously been distributed to the Board members for review and discussion.

Ms. Woods reviewed the history of this property and noted that a conflict regarding the number of bedrooms was discovered during a request to the Board of Health regarding subdivision of 40 and 50 Tom's Hollow Road.

At that time, approval of the subdivision plan by the Board of Health was set with conditions. Subsequently, the subdivision was not approved by the Planning Board and a question was raised by Attorney Turano-Flores on whether the conditions must still be met if the subdivision was not approved. At this time the owners have sought legal action for approval of the subdivision plan. Attorney Turano-Flores is requesting, on the Kennedy's behalf, that discussion of the matter be postponed until legal matters have been resolved.

Board members discussed whether the conditions placed by the Board of Health should remain in effect if there is no subdivision of the parcels.

On a motion by Ms. McKusick and seconded by Dr. Schneider, the Board of Health voted to instruct the Health Agent, per the letter from Attorney Sarah Turano-Flores dated April 1, 2009, to revisit this issue in April of 2010. The vote was 4-0-0.


Agenda Item XI. Adjournment

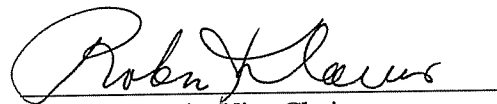
On a motion by Dr. Schneider and seconded by Ms. McKusick, the Board of Health voted to adjourn this meeting of the Board of Health at 4:08 p.m. The vote was 4-0-0.


Respectfully submitted,

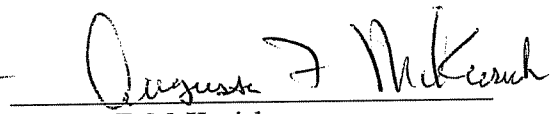

Lynda M. Burwell, Board Secretary

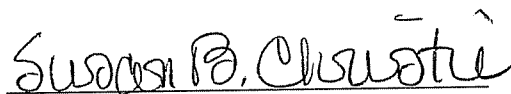
ORLEANS BOARD OF HEALTH

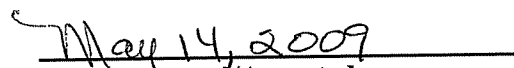

Sims McGrath, Chairman


Robin K. Davis, Vice Chairman


Jan Schneider


Augusta F. McKusick


Susan B. Christie


Date Approved/Accepted