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TOWN OF ORLEANS
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TOWN OF ORLEANS - BOARD OF HEALTH

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MINUTES OF MEETING

May 14, 2009

Chairman Sims McGrath called a meeting of the Board of Health to order at 2:00 p.m. on Thursday, May 14, 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 Robert Canning, Health Agent. Also present, Mark Carron, Liaison from the Board of Selectmen.

Agenda Item I – Public/Press

There was no one present for Public/Press.

Mr. McGrath noted that this would be his last meeting as a member of the Board of Health and as its chairman. He expressed appreciation to the other members for their support during this last year as chairman. Board members also expressed their appreciation for his leadership during his tenure.

Agenda Item 10 – Approve Minutes

The minutes of the Board of Health meeting held on August 18, 2005 had previously been distributed to the Board members for review.

On a motion by Dr. Schneider and seconded by Ms. McKusick, the Board of Health voted to approve the minutes of the meeting of the Board of Health held on August 18, 2005. The vote was 4-0-1. Mr. McGrath was not a member of the Board of Health at that time.

The minutes of the Board of Health meeting held on April 16, 2009 had previously been distributed to the Board members for review.

On a motion by Dr. Schneider and seconded by Ms. McKusick, the Board of Health voted to approve the minutes of the meeting of the Board of Health held on April 16, 2009. The vote was 5-0-0.

Agenda Item 11 – Health Agent's Report

Mr. Canning reported on the following:

Retail Food Establishment License

Woody's Famous Burgers & Fries at 56 Main Street, has applied for a Retail Food Establishment License. Mr. McGrath noted for the record that he had deliberated on this proponent at a previous Board of Health Meeting and also as a member of the Board of Selectmen.

On a motion by Ms. McKusick and seconded by Dr. Schneider, the Board of Health voted to grant a Retail Food Permit to Woody's Famous Burgers & Fries owned by Robert Bay. The vote was 5-0-0.

Temporary Food Permit

The Orleans Improvement Association, represented by Elizabeth Phillips, has requested a Temporary Food Permit to serve refreshments during their garden tour on June 27, 2009 from 10:00 a.m. to 4:00 p.m. Refreshments will be served at 80 Main Street at the beginning of the tour. Iced tea, lemonade, and homemade cookies will be served. The beverages will be poured from multi-serving containers into plastic cups. An ingredient list will be provided for the homemade cookies which will be served utilizing tongs and gloves.

They will use coolers for refrigeration and they will sanitize with bleach. Hand washing facilities are available on site. Everything will be single-serve articles.

Mr. Canning remarked that the cookies are homemade and he referred to the general law because they are not being baked in licensed kitchens. He noted that there is a section that preparation of food for donation to a non-profit organization for distribution or serving by such corporation without charge shall not be subject to licensure or regulation. Ms. Christie noted that the organization has used gloves and tongs to serve refreshments in the past three years.

On a motion by Dr. Schneider and seconded by Dr. Davis, the Board of Health voted to grant a Temporary Food Permit to the Orleans Improvement Association to serve refreshments during their garden tour on June 27, 2009 from 10:00 a.m. to 4:00 p.m. The vote was 5-0-0.

License Approval

Barrows Excavating, owned by Brian Barrows, has applied for a Septage Collection and Transportation license. Mr. Barrows is also a licensed septic installer in Orleans.

On a motion by Ms. McKusick and seconded by Dr. Schneider, the Board of Health voted to grant a Septage Collection and Transportation License to Brian Barrows, owner of Barrows Excavating as long as he meets all inspections and other requirements. The vote was 5-0-0.

Steve's Odd Jobs, owned by Steve Whitmore of Orleans, has applied for a Disposal Works Installer license. He has worked as a septic installer for several other companies.

On a motion by Dr. Schneider and seconded by Ms. Christie, the Board of Health voted to grant a Disposal Works Installer License to Steve Whitmore, owner of Steve's Odd Jobs. The vote was 5-0-0.

Regarding **40 Orie Lane**, Attorney Riley notified Mr. Canning that the required modifications are complete and they will attempt to schedule a walk-through prior to May 21, 2009. The rental ad has been changed to advertise a four-bedroom residence for a maximum of 14 people.

Dr. Schneider questioned how 14 people can sleep in four bedrooms; and stated that he would not be approving 14 people for four bedrooms. Mr. Canning explained the Housing Code calculations for people per square footage of sleeping area. Title 5 is based on the number of bedrooms, not the number of people. Ms. McKusick noted that this is a summer rental with wetlands all around it and a marginal septic system. Dr. Schneider noted that this property owner has exploited this situation and, for the record, he will not approve anything not within the law. Mr. McGrath noted that when the system fails, the Board of Health would then be able to further address these issues.

Agenda Item 2 – Variance Request – 62 Barley Neck Road

Ms. Judy Bersin of Ryder & Wilcox was present to represent Lesley Weller, owner of the property at 62 Barley Neck Road. Ms. Bersin distributed some pictures of the property for the Board members to review. The property has recently changed ownership. In January, 2009 a new trench soil absorption system was approved without variance by the Conservation Commission and the Health Department. The proponent has suggested locating the leaching area closer to the house in order to save some evergreen trees for privacy.

Mr. Canning noted that the property is under order to repair because of the presence of cesspools. He reminded the Board members of the standards of review for repair of a septic system; the same degree of environmental protection, and to consider the hardship factor.

Board members discussed the number of bedrooms and size of the lot. They questioned whether any assessment had been completed of whether the trees can be saved.

On a motion by Ms. Christie and seconded by Dr. Schneider, the Board of Health voted in the matter of 62 Barley Neck Road and finds the following:

- 1. This is an installation of a new soil absorption system to replace an old cesspool.**
- 2. This is a two-bedroom house situated on a 21,919 square foot parcel which was sold in January 2009 and fronted by a large stand of evergreens.**
- 3. The originally-proposed SDS was approved by the Health Department without variances but the new owner would like to save the trees and to do so would require a variance.**
- 4. This is thought to be a hardship in that the evergreens shield her from the traffic on the road.**

Based on these findings the Board of Health approves the variance for construction of the septic system at 62 Barley Neck Road as shown on plan number 10377 prepared by Ryder & Wilcox dated 4/20/2009. The variance approved is as follows:

- 1. The proposed system is a Cultec trench SAS instead of the originally-approved stone trench system.**
- 2. The SAS shall be 15 feet from a crawl space where 20 feet is required. A five foot variance is approved.**

This variance is conditioned by the use of a polyethylene barrier which will be installed along the perimeter of the trench on the dwelling side to prevent effluent from reaching the foundation wall.

The design and variance will provide the same environmental protection as the stone trench originally approved without variance.

Mr. Canning remarked that the septic system has been designed for a three-bedroom dwelling. If in the future the owner requested an increase in bedrooms, Mr. Canning would consider that the approved capacity of this septic system would be for two bedrooms. It would be necessary for the owner to request a variance hearing to appeal for a third bedroom.

The vote was 5-0-0.

Agenda Item 4 – Approval Request – 56 Main Street

Mr. Tim Brady of East Cape Engineering represented Mr. Maury Feigenbaum, owner of the property at 56 Main Street, and Mr. Ramzi Zaineh, proprietor of a two-seat barbershop at that location. He explained the request to expand the number of chairs in the barbershop. There is currently an old Code Title 5 septic system in the complex and he requested that the Board of Health might consider alternative design flow for barbershops. This would require approval by MDEP if it is approved by the Board of Health. Mr. Brady explained that he had conducted a study comparing water usage of Mr. Ramzi's barbershop to a neighboring barbershop. He proposed that three chairs with a washing machine are comparable to the design flow for the current two chairs.

Mr. Canning explained that the original septic system was installed under the 1978 Code. The original approved capacity was 746 gallons per day (gpd) with an overdesign to 970 gpd. The proponent came before the Board of Health in 2007 requesting an increase in flow. Shortly after that the washer installation was found to be acceptable by the Health Department. Title 5 changed its definition of approved capacity.

Board members questioned the number of chairs in Ken's shop compared to Ramzi's shop. They noted that it seems there is confusion in the state regulations. Mr. Canning explained that barbershops and beauty shops are considered in the same regulation. However, a barbershop is a dry operation versus a wet operation in a beauty shop. Mr. Canning noted that this is not an unrealistic proposal. Board members discussed how many tenants use the same septic system to which Mr. Brady outlined the other tenants of the property in addition to the barbershop. Mr. Brady discussed the pumping schedule for this property. Mr. McGrath questioned a comparison of hours used between barbershops. Mr. Canning noted that the Health Department has a letter from the proprietor that his is a dry operation.

On a motion by Ms. McKusick and seconded by Dr. Davis, the Board of Health voted to go on record of recommending that the state grant relief from calculating the sewage flow from Ramzi's barbershop. It is currently a two-seat barbershop and they want to go to three seats. There is a signed agreement consistent with the permitting process on June 27, 2009 that indicates that this is a "dry barbershop" and will continue to stay so. The Board of Health concurs with the water use records presented by East Cape Engineering. This would be an approved usage to go to three chairs with a washing machine which would not exceed the capacity. This is an approved system with 854 gallons. The vote was 5-0-0.

Agenda Item 5 – Approval Request – Orleans Farmers' Market

Ms. Gretel Norgeot, manager of the Orleans Farmers' Market, Inc. presented the plan for this year's Farmers' Market and noted that there are no changes in vendors; but that a few additional vendors mostly produce, have been added. She explained that the State may allow shellfish at the market in the future, and would like to hold that option open should it be approved this year.

Mr. Canning suggested that the Board of Health approve the Farmers' Market pending that all necessary licenses have been submitted to the Health Department.

Ms. Norgeot explained that the Farmers' Market had shellfish at the market about ten years ago, and the State may allow shellfish in the future. Any future shellfish vendors would have to be approved 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 the Orleans Farmers' Market, to approve a license to operate the Orleans Farmers' Market between May 16, 2009 and October 10, 2009 on Saturdays, starting at 8:00 a.m. and ending at noon.

Findings are that:

1. There is a hand washing facility provided by Hot Chocolate Sparrow.
2. This Farmers' Market has been in business for a number of years and there have been no problems.
3. All vendors at the Farmers' Market are licensed under scrutiny of the Board of Health.
4. Any shellfish or lobster offered at this Market shall meet all state license requirements.
5. The product called Woo's Worms tea fertilizer shall be clearly labeled as a fertilizer and "Not for Human Consumption".

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

1. The sale of any smoking blends or any alternative tobacco products is prohibited.

The vote was 5-0-0.

Agenda Item 6 – Approval Request – Snow's Home & Garden

Mr. James Snow of Snow's Home & Garden at 22 Main Street explained that they would like to have a peddlers cart at their location to sell bottled water, juice, soda, and prepackaged snacks. They would operate from 10:00 a.m. to 4:00 p.m., seven days per week starting Memorial Day and through September.

Mr. McGrath noted for the record that he was a member of the Board of Selectmen when they approved the request by Snow's for the cart.

Mr. Canning reported that issue before the Board of Health is regarding that a mobile food operation is required to have a base of operation as a licensed Food Establishment. The Board of Health did approve a license for Snow's cooking demonstrations with a variance for the requirement for a three-compartment sink. Snow's is asking that the approved Food Establishment (their store) be their "base of operation". There will be no food preparation in the store or at the cart. They are requesting permission to use Snow's Home & Garden as a storage facility in the basement and for cleaning the cart after each day.

It was noted that the store would be the base of operations but the location of the cart would not be restricted by the Board of Health.

On a motion by Dr. Schneider and seconded by Ms. McKusick, the Board of Health voted to approve that Snow's Home & Garden have a license to operate a refrigerated vendor cart to sell prepackaged goods that require no preparation recognizing that the food establishment to be used as a base is one that already has approval for limited food preparation granted by this Board. In view of limited operations from the cart, it is adequate for the task. The vote was 5-0-0.

Agenda Item 7 – Discussion – 34 Wesquansett Road

Mr. John Schnaible of Coastal Engineering Company represented Mr. James Price, owner of the property at 34 Wesquansett Road. A recently-conducted inspection indicated necessary repairs to the septic system. It was found that the distribution box provided unequal distribution to the two leaching pits. Under Orleans regulations, if the system is not working properly it would be considered failed. The proponent would like to replace the distribution box, equalize the two outlet pipes, pump full leaching pit and raise the covers to within 6" of grade. Although the property changed owners, it continues to be in the same family.

Mr. Canning noted that if the Health Department had received the report without explanation, they would have issued an order to repair. Under Title 5 it would have been considered to be in hydraulic failure. He explained the options available to the Board members.

Board members discussed the age of the septic system and the fact that there is a garbage grinder in the residence. They also discussed the pumping record. Mr. Schnaible reported that it is a 1978 Code system. Mr. Canning reported that the system was pumped in 1998. It was agreed that the septic system should be put under order to be able to keep track of the system. Mr. Schnaible suggested installing the distribution box and re-piping which will require a permit and inspection by the Health Department. They would re-inspect and review the status of the septic system in one year.

On a motion by Dr. Schneider and seconded by Ms. McKusick, the Board of Health voted in the matter of 34 Wesquansett Road, finding that:

- 1. This is a 1978 system with two leach pits.**
- 2. Because of a transfer in ownership, inspection in March and April 2009 found deficiencies, which technically should be classified as in failure.**
- 3. It was found that unequal distribution to the leaching pits was caused by a malfunctioning distribution box.**
- 4. Therefore, it was proposed that a new distribution box be installed with a readjustment of the flow to make it even between the two leaching pits.**

The motion is to approve that this repair be done, but that the success of the changes be monitored. This will be ensured by the issuing of an order that was not required in the first place but might have been. This will ensure that the system will be monitored for long enough to be sure that it is working well.

- 1. Beyond that, a condition to the motion should demand that the present garbage grinder be removed.**
- 2. Monitoring will require that it be inspected within 12 months of installation. The vote was 5-0-0.**

Agenda Item 8 – Show Cause Hearing Continuation – 33 Bay Ridge Lane

Mr. Canning reported that Coastal Engineering has submitted site plans and a plan for replacement of the septic system. He will be conducting a site visit on Monday. Plans include demolition of part of the building and trailer storage to the north of the building will be demolished. The primary septic system will be constructed in front of the building without a variance at a capacity of 663 gallons per day (gpd) and the reserve area will be located where the demolished buildings were. Mr. Canning explained the construction and

depth of the leaching pits shown on the plan and that they meet the requirements of Title 5. Ms. McKusick expressed concern about the distribution of effluent to the leach pits and Mr. Canning explained that there will be even distribution of the effluent and because it is a commercial property, an as-built plan will be required.

On a motion by Ms. McKusick and seconded by Dr. Davis, the Board of Health voted in the matter of 33 Bay Ridge Lane, to continue the show cause hearing to July 2, 2009 at 3:00 p.m.; ask that a report on site visit be shared with the Board at that time; have a completed application and plans with an update on the construction schedule. A condition of the motion is that the monitoring continues as before. The vote was 5-0-0.

Agenda Item 3 – Discussion – 12 Snow Way

Mr. David Lyttle of Ryder & Wilcox representing Ms. Theresa Thacher, owner of the property at 12 Snow Way, explained that this particular lot was created in 1979 and approved by the Planning Board at that time. In February 2009 he plotted wetlands and conducted test holes. The plan was revised dated May 11, 2009 showing that there is no area on the lot to install a septic system without requesting variances. He described the wetland conditions of the lot; and inquired about building on the lot without variances from the Board of Health and Conservation Commission.

Mr. Canning reported that the Board of Health must go by the standard of review of offering the same degree of environmental protection; then must prove a hardship that all beneficial use of the lot is lost if a variance is denied. He reviewed test holes that had been dug previously showing no groundwater until 17 feet deep. The Board should also review the proposed project as to the reasonableness of the project. It was noted that it is a 1.78 acre parcel.

Mr. Lyttle suggested that a two or three-bedroom house might be approved.

Board members discussed where the house might be located. Mr. Lyttle explained that they will need a variance from the Conservation Commission for a driveway. He inquired as to whether an I/A system might be required. Ms. McKusick opined that restricting the number of bedrooms would be better than requiring an I/A system. Mr. McGrath remarked that to deny variances would cause an unjust restriction on the owner.

Agenda Item 9 – Approval Request – 107 Main Street – Universal Lodge

Mr. Frank Ferzoco, representing the Universal Lodge Building Association, requested approval to conduct the same operation at the Universal Lodge as last year with the exception of adding Fridays and adding macaroni and cheese to the menu.

Mr. Canning explained that Mr. Ferzoco is requesting temporary food permits for a nonprofit lodge; therefore there would be no charge. His request also requires a variance from the state and federal food code. There must be a separate permit for each weekend. The Universal Lodge has a food license but it does not allow cooking outside. Mr. Ferzoco explained that the only food cooked outside is the ribs and hot dogs.

Mr. McGrath suggested that Mr. Ferzoco obtain a letter from the lodge that he is providing services as a fundraiser for the lodge.

On a motion by Ms. McKusick and seconded by Dr. Schneider, the Board of Health voted in the matter of a Temporary Food Permit to be issued to the Universal Lodge agent Frank Ferzoco for the following dates in 2009: May 22 – 24, May 29 – 31, June 5 – 7, June 12 – 14, June 19 – 21, June 26 – 28, July 3 – 5, July 10 – 12, July 17 – 19, July 24 – 26, July 31 – August 2, August 7 – 9, August 14 – 16, August 21 – 23, August 28 – 30, and September 4 – 6.

Findings are that:

- 1. The Universal Lodge has a Food Service Establishment License.**

2. The agent will be cooking some of the food outdoors which will require a variance because of the menu presented on the sheet stamped April 22, 2009.

Conditions are:

1. That a letter must be delivered to the Health Department indicating that this is being done as a benefit to the non-profit organization, the Universal Lodge.
2. A tent must be provided for protection of the food at these 16 separate events.

The vote was 5-0-0.

Agenda Item 11 – Health Agent’s Report (Cont’d.)

Regarding the Orleans Nutrient Management Regulations, the Health Department is preparing for implementation of the regulations. Under transition rules, Section 5.1.2, the Board of Health may grant an extension of six months for a submittal. There are no standards for approving. Board members approved that the discretion of the Health Agent would be most appropriate in these requests.

Agenda Item 13 – Old and New Business/Review Correspondence

13 – 1 A letter from Mr. Jim O’Brien regarding his property at **37 Cedar Land Road** had previously been distributed to the Board members for review and discussion. Mr. Canning explained the circumstances surrounding the approved capacity of his septic system. Mr. O’Brien is concerned that if his septic system fails before he has filed for a building permit, would he lose the protection he has under Section 5.1.2.3. It was noted that this situation might present a hardship, however an applicant must ensure that the septic system has adequate capacity and an operating septic system.

13 – 2 A letter from Stearns & Wheler regarding the **Quarterly Gas Sampling Results at the Orleans Landfill** had previously been distributed to the Board members for review and discussion.

13 – 3 A letter regarding the **Contract Laboratory Support for 2009 Bathing Beach Season** had previously been distributed to the Board members for review and discussion. Board members discussed the frequency of testing.

Ms. McKusick reported that George Heufelder has prepared a grant application for a soil air system (similar to the one used at the Orleans Courthouse) could have a widely tested efficacy for residences on the Cape. Orleans could be well served to start considering the use of the soil air system in certain homeowner systems. There would be no cost to homeowners to install a small pump to get air into the area surrounding a leaching system to make the effluent more aerobic. She would like the Orleans Health Department to suggest candidates for the study. Mr. Canning reported that he met with Mr. Heufelder and they are trying to include this language in the escrow account regulations.

Ms. McKusick also reported that there will be a fee charged to inspectors of I/A septic systems to pay for the Carmody tracking system. Mr. Canning noted that it is a very competitive field, however people maintaining their inspection contracts but are not maintaining their compliance of monitoring. The County will maintain the inspection records. The Health Department will notify homeowners of the change and the required charge.

Regarding the Orleans Yacht Club, Mr. Canning reported that the plan must be revised to include monitoring ports in the leaching area, and the plan resubmitted to the state at which point the state may issue an approval.

Agenda Item XI. Adjournment


On a motion by Ms. McKusick and seconded by Dr. Schneider, the Board of Health voted to adjourn this meeting of the Board of Health at 4:04 p.m. The vote was 5-0-0.

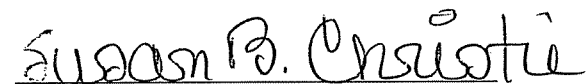
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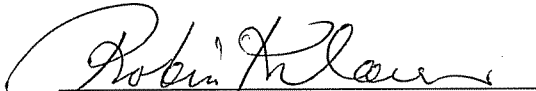

Lynda M. Burwell, Board Secretary

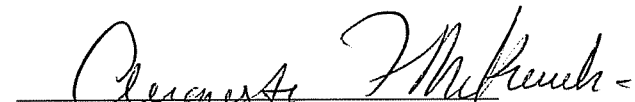
ORLEANS BOARD OF HEALTH

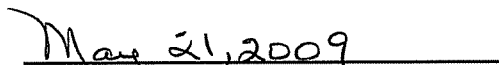
Sims McGrath, Chairman


Jan Schneider


Susan B. Christie


Robin K. Davis, Vice Chairman


Augusta F. McKusick


Date Approved/Accepted