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## **TOWN OF ORLEANS - BOARD OF HEALTH**

### **MINUTES OF MEETING**

**May 21, 2009**

The Board of Health reconvened its meeting at 1:45 p.m. on Thursday, May 21, 2009 in the Skaket Meeting Room of the Orleans Town Hall following a site visit at 1:00 p.m. at 40 Orié Lane.

Present: Robin Davis, Ph.D., Vice-Chair, Augusta McKusick, Jan Schneider, M.D., Susan Christie, Attorney Job Taylor, III; and Robert Canning, Health Agent.

#### **Agenda Item 9 – Health Agent's Report**

Mr. Canning reported on the following:

A letter from Mass. DEP notifying the Orleans Yacht Club of approval, with several conditions, of use of the White Knight technology for its leaching system.

The Health Department has received plans from a structural engineer for the repair of the swimming pool at Old Colony Village. It is anticipated that management will meet all of the requirements of the Board of Health prior to opening the swimming pool for the season. They expect to begin renovations of the pool on September 15, 2009, with completion expected within 45 days.

The Health Department staff have been very busy conducting pre-opening restaurant inspections and pool inspections.

#### **Agenda Item 11 – Old and New Business / Review Correspondence**

11 – 1 The minutes of the Orleans, Brewster, Eastham Groundwater Protection District Board of Managers Meeting of April 1, 2009 had previously been distributed to the Board members for review and discussion.

#### **Agenda Item 8 – Approve Minutes**

The minutes of the Board of Health meeting held on May 14, 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 May 14, 2009. The vote was 4-0-1. Attorney Taylor abstained because he was not a member of the Board of Health at that time.**

The minutes of the Board of Health meeting held on December 2, 2004 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 December 2, 2004. The vote was 4-0-1. Attorney Taylor abstained because he was not a member of the Board of Health at that time.**

#### **Agenda Item I – Public/Press**

Mr. Jim O'Brien requested clarification of two provisions in the Nutrient Management Regulations;

specifically Section 5.1.2.3 which allows for a Building Permit to be submitted after July 1, 2009 based on an existing septic system with approved capacity. He assumed that the Regulations allowed a three-year transition period for an owner to submit a Building Permit to increase the number of bedrooms to the approved capacity of the septic system in the ground. He also assumed that Section 5.1.2.3 would provide protection, during the three-year transition period, to an owner to replace a failed septic system with the same approved capacity as that currently in the ground. He noted that the Board of Health had discussed his letter regarding this issue and had decided that someone in that situation would lose the protection of the Section 5.1.2.3 transition period. He requested that the Board reconsider the conflict between Section 5.1.2.3 and Section 7.1.

Ms. McKusick thanked Mr. O'Brien for bringing this situation to the attention of the Board of Health. She noted that there will be many individual situations that might be addressed through the section on variances for hardships. On an individual basis, she would consider how well the homeowner has monitored and maintained the existing septic system before it failed. Other Board members expressed that they concurred with Ms. McKusick's opinion.

Mr. Canning summarized the Sections 5.1.2.3 regarding approved capacity and Section 7.1 preventing the Health Department from approving a permit that increases the amount of sewage flow beyond one bedroom per 10,000 square feet of property.

It was the consensus of the Board members to refer this question to Town Counsel for his opinion on this conflict, and whether the Board can settle this with a policy rather than change the regulation.

## **Agenda Item 2 – Reorganization and Appointments**

The Board of Health members voted for the positions of chairman and vice-chairman.

**On a nomination by Ms. McKusick and seconded by Dr. Schneider, the Board of Health voted Dr. Robin K. Davis to serve as Chair of the Board of Health. The vote was 4-0-1. Dr. Davis abstained from the vote.**

**Ms. Christie nominated and Attorney Taylor seconded that Ms. Augusta McKusick serve as Vice-Chair of the Board of Health.**

Dr. Schneider expressed concern that Ms. McKusick might not be able to serve as Vice-Chair of the Board of Health as well as continue as its representative on the Wastewater Management Steering Committee. Ms. McKusick accepted the nomination on the condition that if there is a reorganization of the Board within the next year that all positions be considered.

**The vote was 5-0-0.**

**On a nomination by Dr. Schneider and seconded by Ms. Christie, the Board of Health voted Ms. Augusta McKusick to serve as Representative of the Board of Health on the Wastewater Management Steering Committee. The vote was 4-0-1. Ms. McKusick abstained from the vote.**

Ms. McKusick discussed that the recent Town Election had approved the elimination of the Board of Water Commissioners and the establishment of the Board of Water and Sewer Commissioners. She noted that she had approached Mr. Rich who had previously served as the Board of Health's representative to the Water Commissioners regarding his interest in serving as the representative to the new Board of Water and Sewer Commissioners. He responded affirmatively to be reconsidered on an annual basis. Mr. Canning reported that he had also requested that Mr. Rich meet with the Board of Health to discuss that appointment.

## **Agenda Item 4 – Hearing Request – 40 Ori Lane**

Dr. Davis announced that this hearing will be continued to 2:15 p.m. on June 4, 2009.

### **Agenda Item 5 – Variance Request – 68 Keziah’s Lane**

Ms. Stephanie Sequin of Ryder & Wilcox represented Charles Silbert (also present), owner of the property at 68 Keziah’s Lane. Ms. Sequin explained the location of the property and that it is bordered by The River and a marshland, all within a 100 year flood zone. There are two buildings on the property; Building 1 has two bedrooms, and Building 2 has one bedroom. Both buildings are served by separate 1000 gallon septic tanks and a leaching pit, all in good working order when inspected for the real estate transfer. The proponent is requesting variances to continue using the two 1000 gallon septic tanks and install a new leaching area that would allow three additional bedrooms to be created. The two 1000 gallon septic tanks would flow to another 1500 gallon septic tank which in turn would pass through a pump chamber to the new Cultec leaching area.

Ms. Sequin reviewed the floor plans for both buildings and explained the proposed renovations. The assessor’s record notes that Building 1 has three bedrooms. Board members requested clarification on proposed sleeping areas in Building 1.

Ms. Sequin explained further the proposed changes to the septic system serving both houses and then she reviewed the variances necessary to comply with the Orleans Board of Health regulations. She demonstrated that the new system will provide a greater degree of environmental protection than that already in place by installation of a newer, more-adequately designed septic system. She explained that the appearance of the original floor plans would provide that the intent was to have sleeping accommodation of more than three bedrooms between the two buildings.

Mr. Canning reported that there are some design issues that will need to be included on the plan. He discussed the issue of the three tanks in series where Title 5 allows only two tanks in series as well as the Order of Conditions from the Conservation Commission requesting a nitrogen-reducing component on the system. He also noted that the third septic tank will have a capacity of 1000 gallons, not 1500 gallons. He reviewed for the Board members the “standard of review” outlined by Title 5.

Board members requested that a site visit be conducted and discussed the possibility of condominiumizing the property in the future. The issue of hardship and the intentions of the owner when he purchased the property were discussed.

**On a motion by Ms. McKusick and seconded by Ms. Christie, the Board of Health voted in the matter of 68 Keziah’s Lane to continue this hearing to June 4, 2009 at 2:30 p.m. The vote was 5-0-0. A site visit will be conducted on June 4, 2009 at 1:00 p.m.**

### **Agenda Item 6 – Variance Request – 33 Herring Brook Road**

Ms. Stephanie Sequin of Ryder & Wilcox represented the Estate of Lucille Schwarz, owner of the property at 33 Herring Brook Road. Upon inspection of the property in preparation for sale, it was found that the leaching pit was determined to be failed. Ms. Sequin described the locale of the property and noted that the existing house is within 100 feet of the coastal bank of Kescayogansett Pond. The proponent proposes to install a new leaching system outside the 100-foot buffer to the coastal bank. She outlined the reasons for the variances being requested and noted that the Conservation Commission has approved this plan.

Mr. Canning noted that the variances could be avoided by relocating the current septic tank and installing a pump chamber which would allow the leaching system to be located within three feet of grade. However, Title 5 allows a Board of Health to grant a variance as long as the variance is for no more than three feet.

Board members had no comment on this plan.

**On a motion by Ms. Christie and seconded by Dr. Schneider, the Board of Health voted in the matter of 33 Herring Brook Road, finding the following:**

- 1. This is a three-bedroom house situated on a 65,000 square foot property abutting Kescayogansett Pond.**
- 2. The leaching pit in the current system has been determined to be failed so an SAS upgrade is required.**
- 3. The septic tank is a 1000 gallon tank and the leach pit is a vertical leach pit.**
- 4. The new leaching system will be outside the 100 foot buffer as shown on the plan prepared by Ryder & Wilcox for Job No. 10383 dated May 4, 2009.**

**The variances approved are:**

- a. That the existing septic tank, which is eight feet from the cellar wall, will remain. This requires a two foot variance since the regulation is for ten feet from the cellar wall.**
- b. That the SAS shall be five feet, five inches below grade where three feet is the maximum allowed. A two and a half foot variance is approved.**

**These variances are conditioned upon the following:**

- 1. The septic system must be vented to allow for proper aeration of the system.**
- 2. It will bear an H-20 load.**

**The vote was 5-0-0.**

### **Agenda Item 7 – Approval Request – 4 Carver Road**

Mr. Mike Smith of Mike Smith Building & Remodeling, Inc. represented Mr. & Mrs. Loring Carlson, owners of the property at 4 Carver Road, who would like to install a hot tub at their residence. He explained that because of topographical conditions they are not able to provide a backwash facility relative to the level of groundwater.

Mr. Smith explained that the minimal amount of chlorine used in the hot tub is equal to that found in drinking water, and the Zodiac Nature2 cleaning agent consists of all natural ingredients. He suggested that the hot tub water could safely be drained into the on-site septic system which has adequate capacity. Alternatively, the hot tub water could be removed by a licensed septic hauler.

Mr. Canning reported that whenever the Health Department reviews an application for a swimming pool or hot tub, etc., they determine that the water can be drained safely without causing a sanitary nuisance. He noted that because the groundwater level is very close to grade, a backwash pit could not be approved. Title 5 does not allow the discharge of filtered water into a septic system. He emphasized that the Board members must be satisfied with having the disposed water taken off site and that the homeowner must understand that the contract for that service must be maintained. He also suggested that the homeowner might determine if the discharge water can be pumped to the truck utilizing the hot tub pump to avoid any possible contamination of the hot tub.

Board members questioned Title 5's restriction regarding filtered water being discharged into a septic tank. Mr. Canning read the specific section regarding this issue; and also noted that the one-time

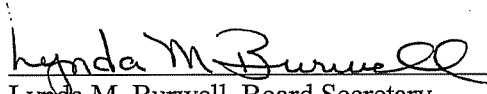
discharge of 453 gallons would be going into a tank designed for 660 gallons per day that must be able to maintain a daily flow. He explained that typically a dry well is installed for the purpose of receiving the discharge water. It was also explained that a formal contract from a septic hauler would be provided outlining the specific schedule for removing the water based on the homeowner's seasonal usage.

**On a motion by Ms. McKusick and seconded by Dr. Schneider, the Board of Health voted in the matter of the hot tub at 4 Carver Road, owner – Carlson, to allow the installation of a hot tub under the condition that a contract with a licensed septage hauler is produced to pump the hot tub at a minimum of once per year, and a dedicated hose for the owners to connect their hot tub with the licensed septage hauler's facility must be provided. The vote was 5-0-0.**

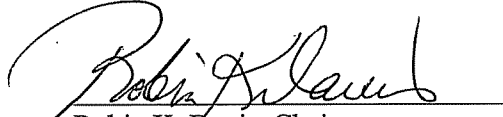
### **Agenda Item 12 – Adjournment**

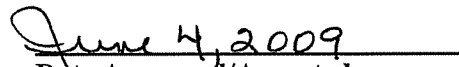
**On a motion by Dr. Schneider and seconded by Ms. McKusick, the Board of Health voted to adjourn this meeting of the Board of Health at 3:15 p.m. The vote was 5-0-0.**

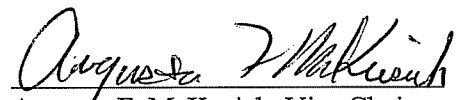
Respectfully submitted,

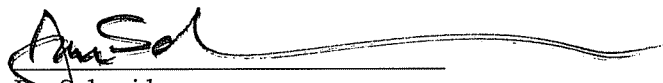
  
Lynea M. Burwell, Board Secretary

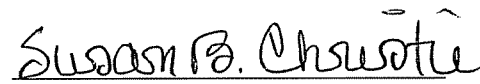
### **ORLEANS BOARD OF HEALTH**

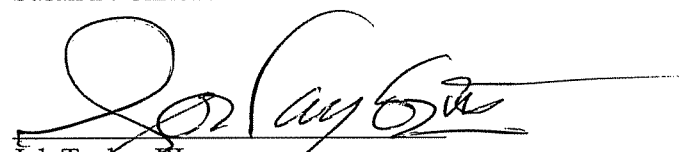
  
Robin K. Davis, Chairman

  
Date Approved/Accepted

  
Augusta F. McKusick, Vice Chairman

  
Jan Schneider

  
Susan B. Christie

  
Job Taylor, III