

TOWN OF ORLEANS - BOARD OF HEALTH

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MINUTES OF MEETING

June 18, 2009

The Board of Health convened its meeting at 1:07 p.m. on Thursday, June 18, 2009 in the Skaket Meeting Room of the Orleans Town Hall.

Present: Robin Davis, Ph.D., Chair, Jan Schneider, M.D., Susan Christie, Attorney Job Taylor, III; and Robert Canning, Health Agent. Also present, Mark Carron, Board of Selectmen Liaison

Excused: Augusta McKusick

Agenda Item 1 – Work Session – Daniels Recycling Company, Inc. Site Assignment

Ms. Christie was excused from this discussion because of a conflict of interest.

Mr. Canning reviewed the material he had previously distributed to the Board members: the request for modifications to the Site Assignment for 29 Giddiah Hill Road, an UNOFFICIAL copy of the Board of Health Site Assignment, a copy of the DEP 2008 Permit Approval with Conditions, as well as a copy of the DRCI request with the pertinent regulations that apply to each request shown in red.

Attorney Taylor explained that the Code requires a public hearing. Dr. Schneider also agreed that, although the modifications seem minor, they will require a public hearing.

Dr. Davis noted that Modification #2 regarding the requirement to have an impervious cover on the metal containers of scrap metal is a requirement of the Department of Environmental Protection; therefore, not to be discussed in a public hearing conducted by the Orleans Board of Health.

Regarding Modification #5, the requirement to have brush storage containers covered with an impervious tarp, Board members discussed whether it is required that brush must be covered. Mr. Canning clarified that the Site Assignment requires that everything coming out of the C&D operation must be covered, and explained that wood waste includes brush and yard waste which is not affected by the C&D operation. Therefore, yard waste and brush are not covered in the Site Assignment and will not be discussed in a public hearing by the Orleans Board of Health. However, it is a requirement of the DEP that anything being trucked into or off the site must be covered, including wood waste (brush).

He also reiterated that Mr. Daniels has requested that he not be required to cover scrap metal and whether it must be covered by an impervious material.

Discussing Modification #1, Hours of Operation, DRCI would need approval from both the State and Board of Health to change the hours of operation. It was noted that if DRCI was allowed to open at 7:30 a.m. it would be within the new town By-law regarding noise.

Discussing Modification #3, Acceptance of Unsecured Loads, Mr. Canning reiterated that this is a state law that all loads must be covered in order to protect the public on the roadway. Daniels is offering covers for the trucks before they are allowed into the site. It was noted that if Mr. Daniels turns away incoming trucks without covers, he may lose business.

Mr. Canning reviewed Modification #4 regarding the use of 100-yard trailers. He discussed turning maneuvers at the intersections accessing the facility and noted that increased vehicle weight may cause damage to the town roads. However, increasing the size of the trailer might decrease the number of trips and may be advantageous for the town. It was noted that comments on this subject from the public would have to be heard at a public hearing.

Board members discussed each modification again.

Mr. Canning outlined the requirements for a Site Assignment public hearing and noted that Attorney Bruce Gilmore had served as the hearing officer in the past. The applicant is usually required to pay for those services. He also discussed the timing for a public hearing and whether this would be considered a Minor Modification.

It was the consensus of the Board members to refer to Town Counsel whether this request should proceed to a public hearing and who would pay for the services of a hearing officer.

The Board of Health broke for a short recess and reconvened the meeting at 1:46 p.m. Ms. Christie joined the meeting at this time.

Agenda Item 7 – Approve Minutes

The minutes of the Board of Health meeting held on June 4, 2009 had previously been distributed to the Board members for review.

On a motion by Dr. Schneider and seconded by Attorney Taylor, the Board of Health voted to approve the minutes of the meeting of the Board of Health held on June 4, 2009. The vote was 4-0-0.

Agenda Item 8 – Health Agent's Report

Mr. Canning reported on the following:

The Pleasant Bay beach swimming area had been closed during the previous week because of an elevated bacteria count. This occurred during a heavy rain event causing road run-off and the water was retested and the beach reopened the next day. Because of one unacceptable sampling, it will most likely be required that the water be tested weekly. Barnstable County Health Department conducts the sampling.

Permits

Lost Dog Pub, owned by Hurricane Hugo, Inc., located at 63 Route 6A has applied for a Food Service Permit. They plan to open this weekend.

On a motion by Dr. Schneider and seconded by Attorney Taylor, the Board of Health voted to approve a Food Service Permit for The Lost Dog Pub. The vote was 4-0-0.

The **Orleans Firebirds Home Plate Shop** has applied for a Food Service Permit to sell soda, water, and packaged ice cream.

On a motion by Ms. Christie and seconded by Dr. Schneider, the Board of Health voted to approve a Food Service Permit for the Orleans Firebirds Home Plate Shop to sell soda, water, and packaged ice cream. The vote was 4-0-0.

The **Friends of Meetinghouse Pond**, represented by Lynne Eldridge, state they are a non-profit organization but they have no tax-exempt number. The Friends will be holding their annual Regatta on July 11, 2009 from 11:30 a.m. to 1:00 p.m. at 12 Tides End Lane, a private home. They plan to serve watermelon and store-bought ice cream sandwiches. Because they will be cutting the watermelon they require a variance for the menu. The watermelon and ice cream sandwiches will be purchased from a licensed market. The watermelon will be washed and cut immediately before it is served and will be passed on a tray utilizing tongs for serving. The ice cream will be kept in a freezer until it is served. Hand washing and restroom facilities will be available at the house. Trash will be collected by the owner.

On a motion by Attorney Taylor and seconded by Dr. Schneider, the Board of Health voted in the matter of the request by the Friends of Meetinghouse Pond to grant them a Temporary Food Service

Permit and a variance for the cut fruit and to waive the fee for their annual regatta to be held on July 11, 2009 from 11:30 a.m. to 1:00 p.m. at 12 Tides End Lane. The vote was 4-0-0.

The **Orleans Firemen's Relief Association** requested a Temporary Food Permit and variance for the menu to be served such as pancakes, sausages, syrup, butter, orange juice, and coffee at the Annual Pancake Breakfast to be held on July 5, 2009 from 7:00 a.m. to 11:00 a.m. The food will be purchased from Stop & Shop. The pancakes and sausages will be precooked and then reheated on griddles. Gloves will be used to prevent bare-hand contact with the food. Hand washing and restroom facilities are available on site. Paper plates, cups, and plastic utensils will be used. The event will be held indoors at the Orleans Fire Station. Because this is a non-profit organization, a Certified Food Protection Manager is not required.

On a motion by Ms. Christie and seconded by Dr. Schneider, the Board of Health voted in the matter of the Orleans Firemen's Relief Association to approve a Temporary Food Permit and a variance for the menu for the Annual Pancake Breakfast to be held on July 5, 2009 from 7:00 a.m. to 11:00 a.m. at the Orleans Fire Station. The vote was 4-0-0.

Ardath's Mobile Food requested a variance for cooking outdoors at the following events:

- Orleans Firebirds Baseball Home Games
- July 4th Fireworks at Rock Harbor
- Marine's Concert at Eldridge Park
- Orleans Police Department Block Party in August

Mr. Canning noted that they have received a variance for these functions in the past. They serve hamburgers, hot dogs, and precooked sausages.

On a motion by Attorney Taylor and seconded by Dr. Schneider, the Board of Health voted in the matter of Ardath's Mobile Food to approve a variance to cook outdoors at the above listed events. The vote was 4-0-0.

Mr. Canning reported that the Health Department has received an application for a Disposal Works Construction Permit for 33 Bay Ridge Lane.

The Health Department has also received a request from John Martin, the owner of 32 and 55 Rayber Road, to extend the time for compliance to remove some scrap metal and piles of sand creating dust.

On a motion by Ms. Christie and seconded by Attorney Taylor, the Board of Health voted in the matter of 32 and 55 Rayber Road to allow Mr. Martin an additional 60 days to comply with the Health Department Order as noted above. The vote was 4-0-0.

Regarding the Nutrient Management Regulations, the Health Department has received several inquiries and questions, and there have been a large number of permit applications processed with only a couple of weeks before the effective date of the Regulations. The Health Department has been doubling up on soil tests to accommodate requests by engineers.

Agenda Item 9 – Old and New Business / Review Correspondence

9 – 1 A request from Ardath's Food Mobile had previously been distributed to the Board members for review and discussion. This was addressed previously in the Health Agent's Report.

9 – 2 A letter from Stearns & Wheeler reporting on the Semi-Annual Groundwater Monitoring Results had previously been distributed to the Board members for review and discussion. Mr. Canning reported that there were no violations.

9 – 3 A letter from Mr. Canning to Robert and Mark Filteau regarding 33 Bay Ridge Lane had previously been distributed to the Board members for review and discussion. This was addressed previously in the Health Agent's Report.

9 – 4 A letter from Mr. Canning to Dushyanthi Mahendran regarding 40 Oriole Lane had previously been distributed to the Board members for review and discussion. Mr. Canning noted that this letter had just been mailed.

Mr. Canning discussed the Resolution in Support of Updating the Massachusetts Bottle Bill. He requested input from the Board members regarding whether they would endorse this Resolution.

On a motion by Attorney Taylor and seconded by Dr. Schneider, the Board of Health voted to advise John Kelly that the Board of Health has no problem with the Resolution and is in favor of its goals and objectives. The vote was 4-0-0.

Mr. Canning distributed a copy of the Consumer Confidence Report prepared by the Orleans Water Department.

Agenda Item 2 – Public/Press

Ms. Darnell Caffoni, a vendor at the Orleans Farmers' Market, expressed concern regarding remarks from some of the Board members at the last meeting concerning the type of products being offered for sale at the Market. She discussed the issue of whether products should be encouraged to emphasize agricultural produce and noted that 90% of farmers' markets offer other products for sale. She listed the items sold at other markets. Ms. Caffoni quoted research that people attending a farmers' market often spend money at other retail businesses nearby.

Ms. Ellen Whalen, an Orleans resident and a shopper at the Orleans Farmers' Market was also concerned about the comment made at the last meeting. She explained that many people early come from surrounding towns, which draws business for nearby businesses. In comparison to other farmers' markets she has visited in the Northeast, she would like to see more varied products at the Orleans Farmers' Market.

Board members discussed further that their comments at the previous meeting were not meant to be derogatory, and that the previous discussion was primarily about prepackaged, non-local products. Mr. Canning reported that historically the Health Department has not required a license for the Orleans Farmers' Market but does ensure that vendors are licensed at their home base. The Orleans Board of Health may have to license the entire market or license individual vendors to have better control over the vendors. He suggested research to determine how other markets are licensed.

Ms. Gretel Norgeot, manager of the Orleans Farmers' Market, explained that their bylaws have regulations stating the percentage of produce vendors, horticultural vendors, and other foods and items, and when the market grows they must have more agriculture vendors before they can add other items.

Ms. Christie noted that the Board of Health has never impeded the activities of the Orleans Farmers' Market but she was concerned when it was mentioned that sandwiches were offered, and that might infringe on other local restaurants offering sandwiches.

Agenda Item 3 – Variance Request – 49 Aspinet Road

Ms. Stephanie Sequin of Ryder & Wilcox represented Alan (also present) and Susan Magary, owners of the property at 49 Aspinet Road. Ms. Sequin explained her request for variances to allow the installation of a new sewage disposal system to replace the current cesspools. The property is presently for sale. Most of property is within the 100' buffer to a wetland. She explained the proposed location of a leaching field and other topographical issues with the land and the components needed under a local upgrade approval. This project was approved by the Cons Comm. with some discussion regarding a nitrogen-reducing technology.

Mr. Canning reported that Title 5 allows the Board of Health to grant a variance for the depth of cover over a septic tank. He expressed concern about the ability to excavate in the roadway and about the well on an abutting lot, limiting the location of a leaching area.

Mr. Magary commented that the road is a "paper road". He explained that the neighbors agreed to an easement allowing them emergency access to Snow Goose Road when the beach road is congested; and that the road cannot be developed any further.

On a motion by Ms. Christie and seconded by Dr. Schneider, the Board of Health voted in the matter of requests for variances for 49 Aspinet Road finding that:

- This will be an upgrade of a sewage disposal system for a four bedroom house on a 22,000 square foot lot presently with two cesspools.
- Aspinet Road is a private road and the applicants own to the center of the road needing local upgrade approval. Variances are needed from the Board of Health as a result.
- The parcel abuts a vegetated wetland with only a small area in the southeast corner outside the 100 foot buffer zone.
- This property is served by town water but a neighbor to the south has a potable well, and the well's zone of contribution encompasses the area available for a compliant soil absorption system.

Based on these findings, the Board approves the variances for the construction of a septic system at 49 Aspinet Road which is owned by Alan and Susan Magary as shown on Job. No. 10432 prepared by Ryder & Wilcox dated May 21, 2009. The variances approved are as follows:

- The soil absorption system will be at property line where a 10 foot setback is required. A 10 foot variance is granted.
- A two-compartment septic tank shall be four feet below grade where three feet maximum is allowed. A one foot variance is granted.
- The soil absorption system shall be 74 feet from a vegetated wetland, where 100 feet is required. A 26 foot variance is granted.

These variances are conditioned upon the following:

- A heavy duty, 2500 gallon septic tank with an H-20 specification is proposed to withstand the additional soil loading.

The vote was 4-0-0.

Agenda Item 4 – Discussion – 48 Willie Atwood Road

Mrs. Mary Barry, owner of the property at 48 Willie Atwood Road, addressed the complaint regarding a drainage pipe creating a mosquito harborage on a neighbor's property. She reported that the amount of water is minimal, and is part of a natural seasonal process each year. She distributed photos of the present condition and noted that the pipe was part of the house when they purchased it.

Mr. Canning explained the circumstances of a complaint at the Health Department. On May 18, 2009 water was observed coming from the pipe while the sump pump ran for about a minute. There was an area of standing water of about 2 foot diameter before and after the pipe discharged. This is a low area on the property that was classified as a wetland but did not have standing water when a septic system was installed four years ago. Based on the observations of May 18th, the Health Department wrote an order to the Barry's to have the nuisance abated. Mr. Canning reported that he went again on June 16, 2009 and observed that the entire area was dry, the wetland was completely dry, and nothing was even damp. Mr. Canning consulted the Cape Cod Mosquito Control program who advised that if there is standing water for a week in warm weather it can create a habitat for mosquito larvae.

Board members discussed standing water in July and August, and decided it is premature to make any determination. It was noted that a trench exists between the properties and that it is a very wet location. However, the only time the pump runs is when it is already wet outside in the surrounding area.

Mr. Robert Rich, Water Commissioner, spoke to the issue. He explained that he has a wet basement and that he directs his water to his grass.

The Board members must determine if this drainage pipe is a nuisance issue.

On a motion by Attorney Taylor and seconded by Ms. Christie, the Board of Health voted in the matter of 48 Willie Atwood Road that the order be rescinded.

Board members discussed whether the Health Department should further monitor this situation for evidence of mosquitoes. Mr. Canning noted that there is a town By-law which prohibits pumping water to an abutter's property.

The vote was 4-0-0.

Agenda Item 5 – Discussion with Robert Rich, Water Commissioner Liaison

Mr. Rich noted that Louis Briganti is doing a commendable job as manager of the Water Department. He reported that, per capita, Orleans residents have been using less water over the past several years.

Mr. Rich explained that Town Meeting approved replacement of the ultra filtration membrane for treatment of water, and he explained the technology of switching from ultra filtration to micro filtration and how the Board of Water Commissioners determined to make the change. This change will reduce the cost to process water and the equipment will have a longer warranty period.

Mr. Rich addressed the issue of when the new Water and Sewer Commission begins its responsibilities. He stressed the need for continuity for the new Board of Water and Sewer Commissioners and expressed his willingness to be reappointed to that new board.

On a motion by Ms. Christie and seconded by Attorney Taylor, the Board of Health voted to make a new appointment of Robert Rich to the Board of Water and Sewer Commissioners when it establishes its Board. The vote was 4-0-0.

Agenda Item 6 – Approval Request – Orleans Farmers' Market

Mr. Canning explained that the Board of Health has previously approved the vendors at the Orleans Farmers' Market without licensing them. Mr. David Reese has applied to be a vendor of a refrigerated food product produced at his facility in Harwich. It will be necessary to monitor the temperature of refrigeration at the Market. The Board should determine whether this product can be considered salable at a farmers' market versus a needing a retail food sales permit.

Ms. Gretel Norgeot noted that there are several other vendors at the Orleans Farmers' Market that have retail operations, and they also have egg vendors that pre-chill the eggs and keep them in a cooler.

Mr. Reese explained his smoke house operation for smoking various meats, fish, etc. In 2004 he obtained a vendors license to sell his products off premises, and his certification for cryovac packaging to increase the shelf life of the product. He pursued a FDA license to process fish products and received it in June 2008; he then began working with the Cape Cod Hook Fishermen Association to obtain local fresh fish for his products. He would now like to be able to sell his products at the Orleans Farmers' Market in order to expose his products to more people as well as conduct sample tastings at the market. He has large electrical coolers to maintain proper storage temperature.

Mr. Canning discussed that Mr. Reese would need a Temporary Food License to conduct tasting at the Orleans Farmers' Market; just as other vendors have been licensed for tasting. Mr. Reese would need a separate

license for each event and the Board members must determine whether to license the Orleans Farmers' Market or whether they license the vendor.

Ms. Norgeot explained that there is another vendor offering samples at the Orleans Farmers' Market, but she is licensed already by the Orleans Board of Health. Board members discussed the method of tasting.

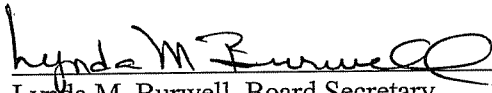
Mr. Canning reiterated that the Board of Health has never licensed anyone at the Farmers' Market. However, if a vendor is producing processed food, they have been licensed for producing that food and they have been allowed to sell at the Farmers' Market without licensure. Board members discussed the need for licensure and the need for a "person in charge".

On a motion by Dr. Schneider and seconded by Ms. Christie, the Board of Health voted in the matter of the Orleans Farmers' Market to appoint Gretel Norgeot as the "person in charge"; and in the matter of the application by David Reese to grant him two Temporary Food Permit Licenses for each Saturday, June 20, 2009 and June 27, 2009. The vote was 4-0-0.

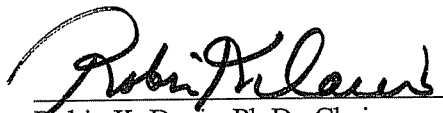
Agenda Item 11 – Adjournment

On a motion by Dr. Schneider and seconded by Attorney Taylor, the Board of Health voted to adjourn this meeting of the Board of Health at 3:36 p.m. The vote was 4-0-0.

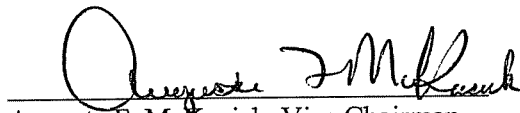
Respectfully submitted,

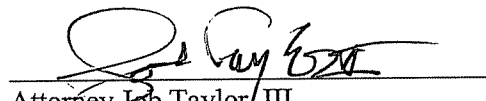

Lynda M. Burwell, Board Secretary

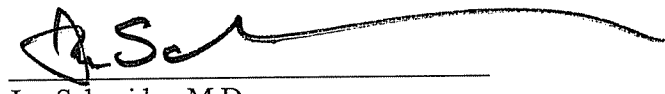
ORLEANS BOARD OF HEALTH

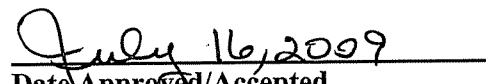

Robin K. Davis, Ph.D., Chairman

Susan B. Christie


Augusta F. McKusick, Vice Chairman


Attorney Job Taylor/III


Jan Schneider, M.D.


Date Approved/Accepted