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TOWN OF ORLEANS  
TOWN CLERKS OFFICE

## TOWN OF ORLEANS - BOARD OF HEALTH

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### MINUTES OF MEETING

July 16, 2009

The Board of Health convened its meeting at 2:05 p.m. on Thursday, July 16, 2009 in the Skaket Meeting Room of the Orleans Town Hall.

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

Excused: Susan Christie

#### Agenda Item 1 – Public/Press

There was no one present for Public/Press.

#### Agenda Item 2 – Discussion – 18 Chickadee Lane

Mr. Canning reported that Ms. Koch would like to sell home-baked products at the Farmers' Market and to do so she would need a Residential Kitchen Permit from the Board of Health. The Board of Health regulations specify that an operation requiring a Residential Kitchen Permit causes an increase the amount of flow to the septic system; therefore the requirement to have the septic system inspected and an engineer to certify that it has the capacity to accommodate the increased flow. Ms. Koch asked for a waiver of the requirement to have the septic system inspected. Mr. Canning read an excerpt from Title 5 that addresses a home occupation as well as a change in flow.

Ms. Michelle Koch, owner of the property at 18 Chickadee Lane, explained her request for a waiver of the requirement to have her septic system inspected because of the expense involved. She noted that the excessive expense is because of the need for a backhoe for excavation of the inspection ports. She reported that her septic system had been pumped the day before according to her regular septic maintenance schedule.

Board members inquired about the amount of cooking she would be doing in the kitchen and whether it is seasonal or year-round. They also discussed why a backhoe is necessary for an inspection. Mr. Canning explained that the need for a backhoe is determined by how deep the inspection ports are. He noted that the Board members must consider whether the issue is the change in use of the property or the increase in flow because of the additional food preparation that requires the inspection. It was the consensus of the Board members that Ms. Koch's additional baking and dishwashing will not significantly increase the flow to the septic system.

**On a motion by Attorney Taylor and seconded by Dr. Davis, the Board of Health voted in the matter of 18 Chickadee Lane to grant a wavier requiring a septic inspection for a Residential Kitchen Permit; finding that Ms. Koch proposes to use her home kitchen for commercial baking during the seasonal Orleans Farmers' Market. The vote was 4-0-0.**

#### Agenda Item 4 – Health Agent's Report

Mr. Canning reported on the following:

##### Temporary Food Permits

**Gypsy Wind Productions** represented by Jean Meike applied for Temporary Food Permits and variances from the requirement to have a Certified Food Protection Manager and for the menu for two shows at the Cape Cod Artists & Craftsmen Show on July 18 and 19, and August 15 and 16 from 9:00 a.m. to 5:00 p.m. each day. These events will be held outdoors at the Nauset Regional Middle School. They will offer tastes of jams and

jellies with store-bought crackers. He noted that they have been offering sampling at this show for approximately ten years.

**On a motion by Dr. Schneider and seconded by Ms. McKusick, the Board of Health voted in the matter of Gypsy Wind Productions to grant Temporary Food Permits and variances for the requirement to have a Certified Food Protection Manager and for the menu for two shows at the Cape Cod Artists & Craftsmen Show on July 18 and 19, and August 15 and 16 from 9:00 a.m. to 5:00 p.m. each day to be held outdoors at the Nauset Regional Middle School. The vote was 4-0-0.**

**Ben's Sugar Shack** was represented by Ben Fisk and is based in Temple, New Hampshire where food service permitting is not required for pure maple products such as those being sold by this vendor. Mr. Fisk requests that he be allowed to offer candy samples as well as sell maple candy, cream, and syrup. He would also be making maple cotton candy. Mr. Fisk has requested a variance for the requirement for a Certified Food Protection Manager and for the menu. This event would take place at the Cape Cod Artists & Craftsmen Show on July 18 and 19 from 9:00 a.m. to 5:00 p.m.

**On a motion by Attorney Taylor and seconded by Ms. McKusick, the Board of Health voted in the matter of Ben's Sugar Shack to grant Temporary Food Permits and variances for the requirement to have a Certified Food Protection Manager and for the menu at the Cape Cod Artists & Craftsmen Show on July 18 and 19, from 9:00 a.m. to 5:00 p.m. each day to be held outdoors at the Nauset Regional Middle School. The vote was 4-0-0.**

**Nauset Beach** was closed on July 9, 2009 after a sample taken on July 8, 2009 exceeded the bacteriological limits for bathing beaches. On July 10, 2009 the beach water was again sampled, and based on the results of this sample, the beach was reopened on July 11, 2009. Nauset Beach had received a variance from the Board of Health to reduce the frequency of sampling. However, because of this event, that variance is void and the town must resume weekly sampling. Mr. Canning suspects that the increased bacterium in the water was caused by a group of seals in the water.

After Mr. Canning discussed the Bathing Beach regulations with John Kelly and Paul Fulcher, they decided to investigate two issues that could benefit the town regarding the sampling program and the water quality at the beach. He discussed the timing and location of the sampling at Nauset Beach and Skaket Beach.

Board members discussed whether it would be possible to sample more than one location. It seems that one sample is not adequate and that the outer beaches should be sampled separately in addition to the guarded beach. Mr. Canning explained that they could take three samples and use the results of two out of the three. He noted that there are several options to be considered and he will continue working with county officials and Mr. Fulcher.

**On a motion by Dr. Schneider and seconded by Ms. McKusick, the Board of Health voted to authorize the Health Agent to continue investigating the available options for beach water testing and to report back to the Board of Health on his recommended protocol. The vote was 4-0-0.**

**40 Orie Lane** – Mr. Canning reviewed the vote taken by the Board of Health at their meeting on June 4, 2009. A specific condition of that vote required that *the soil absorption system must be visually inspected weekly by a DEP approved septic system inspector. This inspection, at a minimum, must include a measurement of the liquid level in the soil absorption system. The inspection is to be performed at the end of each week during the period of Memorial Day through Labor Day and a report indicating the results of the measurements must be submitted to the Health Department within seven days of the inspection.* To date, the Health Department has not received any reports regarding the liquid level in the leaching area. Attorney Taylor suggested that the Health Department further pursue this issue.

**On a motion by Dr. Schneider and seconded by Ms. McKusick, the Board of Health voted to authorize the Health Agent to consult further on this matter with Town Counsel. The vote was 4-0-0.**

Mr. Canning discussed a memo dated July 16, 2009 that he had written to the Board members regarding the DRCI Modification to Conditions of Site Assignment. The memo outlined the steps required to comply with 310 CMR 16.00 Site Assignment Regulations for Solid Waste Facilities. The first requirement is to select a Hearing Officer, and after speaking with Attorney Bruce Gilmore, Mr. Canning recommended to the Board of Health that they consider Attorney Gilmore as a Hearing Officer.

**On a motion by Ms. McKusick and seconded by Attorney Taylor, the Board of Health voted to request Attorney Bruce Gilmore to serve as a Hearing Officer during the public hearing regarding the DRCI Request to Modify the Conditions to their Site Assignment. The vote was 4-0-0.**

Mr. Canning recommended August 20, 2009 at 7:00 p.m. in the Nauset Room of the Orleans Town Hall as the date, time, and place for the public hearing. After considerable discussion, and acknowledging that Mr. Daniels is anxious to expedite this procedure, the Board members suggested that it would be more efficient to schedule the public hearing in September when all members of the Board of Health could be present.

**On a motion by Ms. McKusick and seconded by Dr. Schneider, the Board of Health voted to schedule the public hearing regarding the DRCI Request to Modify the Conditions to their Site Assignment on Thursday, September 3, 2009 at 7:00 p.m. in the Nauset Room of the Orleans Town Hall. The vote was 4-0-0.**

Mr. Canning reported that the public notice format is delineated in the Site Assignment regulation and he reviewed the draft notice he had previously prepared. The notice would be changed to reflect the change in date.

Board members discussed the fee allocation that will be the responsibility of DRCI. The fee assessed can be *fifty percent of the maximum allowable Technical Fee for the appropriate size and type of facility*. The Technical Fee can be used for the cost of holding a public hearing, the cost of public notice, cost of recording the hearing, cost of the Hearing Officer, cost of producing copies and the cost of renting a hall (when the municipality has no such facilities). Any amount of the initial Technical Fee that is not utilized for the foregoing expenses will be returned to DRCI.

Board members discussed the need for an outside expert to interpret the traffic study previously prepared for DRCI. Mr. Canning suggested that the members of the Orleans Traffic Safety Committee review the DRCI traffic study and submit their interpretation to the Board of Health. If the Board members still have questions about the traffic study, the expense to hire an outside expert could be covered by the Technical Fee.

**On a motion by Ms. McKusick and seconded by Dr. Schneider, the Board of Health voted that the legal notice submitted as a draft be publicized as required changing the date to September 3, 2009 at 7:00 p.m. The vote was 4-0-0.**

**On a motion by Attorney Taylor and seconded by Ms. McKusick, the Board of Health voted to request from Daniels Recycling Company, Inc. a fee of \$3,779.50 as fifty percent of the maximum allowable adjusted Technical Fee for the purposes of conducting a public hearing regarding the DRCI Request to Modify the Conditions to their Site Assignment to be held on Thursday, September 3, 2009 at 7:00 p.m. in the Nauset Room of the Orleans Town Hall. The vote was 4-0-0.**

Board members discussed handling public speakers to keep them from repeating statements already presented as well as other procedures.

Mr. Canning expressed to the Board members and to Mr. Carron that during the beach closure, Mr. Fulcher and the staff at Nauset Beach were very conscientious and accommodating as was the staff from Barnstable County that conducted the water testing.

**On a motion by Dr. Schneider and seconded by Ms. McKusick, the Board of Health voted to send a letter of appreciation to the Orleans Parks and Beaches Department and to the Barnstable County Health Department staff. The vote was 4-0-0.**

### **Agenda Item 3 – Approve Minutes**

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

**On a motion by Ms. McKusick and seconded by Attorney Taylor, the Board of Health voted to approve the minutes of the meeting held on July 2, 2009. The vote was 3-0-1. Dr. Davis abstained because she was excused from that meeting.**

The minutes of the Board of Health meeting held on June 18, 2009 had previously been distributed to the Board members for review.

**On a motion by Attorney Taylor and seconded by Dr. Schneider, the Board of Health voted to approve the minutes of the meeting held on June 18, 2009. The vote was 3-0-1. Ms. McKusick abstained because she was excused from that meeting.**

The minutes of the Board of Health meeting held on December 16, 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 held on December 16, 2004. The vote was 3-0-1. Attorney Taylor abstained because he was not yet a member of the Board of Health.**

The minutes of the Board of Health meeting held on November 18, 2004 had previously been distributed to the Board members for review.

**On a motion by Ms. McKusick and seconded by Dr. Schneider, the Board of Health voted to accept as amended the minutes of the meeting held on November 18, 2004. The vote was 4-0-0.**

### **Agenda Item 5 – Old and New Business / Review Correspondence**

5 – 1 The Quarterly Gas Sampling Results for the Orleans Landfill from Stearns & Wheeler had previously been distributed to the Board members for review and discussion.

5 – 2 A letter from Brian Harrison, Building Commissioner, regarding 40 Orié Lane had previously been distributed to the Board members for review and discussion.

5 – 3 A letter from John Clark, Trustee, representing the Golden Eagle Condominium Association had previously been distributed to the Board members for review and discussion. Mr. Canning noted that they have been under order for several years through several extensions. Inspections for structural integrity of their septic systems have not yet been conducted but are expected to be completed soon.

5 – 4 A letter from the Health Department to Daniels Recycling Company, Inc. regarding the modification of conditions to the Site Assignment had previously been distributed to the Board members for review and discussion. Mr. Daniels responded to the Health Department with his request to proceed with a hearing.

5 – 5 A letter from the Health Department to Messrs. Filteau regarding 33 Bay Ridge Lane had previously been distributed to the Board members for review and discussion. Although plans have been submitted and approved there is no sign of construction to date.

5 – 6 The minutes from the June 17, 2009 meeting of the Orleans, Brewster, Eastham Groundwater Protection District Board of Managers Meeting had previously been distributed to the Board members for review and discussion.

5 – 7 The *corrected* minutes from the May 13, 2009 meeting of the Orleans, Brewster, Eastham Groundwater Protection District Board of Managers Meeting had previously been distributed to the Board members for review and discussion.

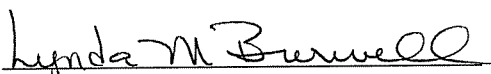
5 – 8 A letter from MDEP approving an Alternative Design Flow for Title 5 Systems at Ramzi's Barbershop, 56 Main Street, had previously been distributed to the Board members for review and discussion.

Attorney Taylor inquired about the recent activity in town for mosquito control. Mr. Canning explained that they are conducting their annual monitoring and clearing. They are most likely sampling for larvae in the water, and treating it as necessary. To date there have been no incidents of West Nile virus or encephalitis.

### **Agenda Item 11 – Adjournment**

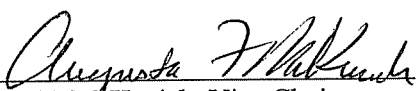
**On a motion by Attorney Taylor and seconded by Ms. McKusick, the Board of Health voted to adjourn this meeting of the Board of Health at 3:00 p.m. The vote was 4-0-0.**

Respectfully submitted,

  
Lynda M. Burwell, Board Secretary

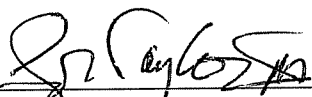
## **ORLEANS BOARD OF HEALTH**


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Robin K. Davis, Ph.D., Chairman

  
Augusta F. McKusick, Vice Chairman

  
Jan Schneider, M.D.

Excused  
\_\_\_\_\_  
Susan B. Christie

  
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Attorney Job Taylor, III

  
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Date Approved/Accepted