

TOWN OF ORLEANS - BOARD OF HEALTH

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MINUTES OF MEETING

February 4, 2010

The Board of Health convened its meeting at 2:00 p.m. on Thursday, February 4, 2010 in the Skaket Meeting Room of the Orleans Town Hall.

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

Agenda Item 1 – Public/Press

There was no one present for Public/Press.

Agenda Item 2 – Approval Request – Phoenix Fruit & Vegetables

Ms. Sherri Clare of Phoenix Fruit & Vegetables presented her request for a waiver from the requirement to have a grease trap because they are repackaging, not preparing, foods to be sold. She also noted that Mr. Tim Brady of East Cape Engineering, Inc. had written a letter stating that *the repackaging activity will not affect the water usage or the septic system design flow of 555 gallons per day, and that the only water used is for minor clean up after slicing and is not sufficient to require a grease trap.*

Dr. Davis disclosed that she is Ms. Clare's neighbor and that she has no financial affiliation with the Phoenix Fruit & Vegetables, however, she would abstain from this discussion if Board members determined that it would present a conflict of interest. It was the consensus of the Board members that there would be no conflict.

Mr. Canning reported that Phoenix Fruit & Vegetables had originally been licensed as a retail food establishment. In May 2007 the Board of Health granted an exemption from the requirement to have a Certified Food Protection Manager and to allow them to cut whole fruit to be sold from a refrigeration unit. Because there was no generation of grease from that operation the Board of Health determined that it was not necessary to install a grease trap.

During a recent Health Department inspection it was observed that Phoenix Fruit & Vegetables was also repackaging other bulk items such as beans, nuts, grains, dried fruit, as well as repackaging large batches of soup to be sold from smaller containers.

Mr. Canning noted that they have the physical facilities for preparing food; however, the septic system is of concern. Although they are not preparing food, they are repackaging food; therefore requiring a food handling license. He suggested that the Board of Health require a Certified Food Protection Manager for the business, and allow them ninety days to continue operation of the business while they obtain that certification.

Board members discussed the requirement for that certification and Ms. Clare reported that there will be two one-day classes available in March they will attend. There being no further questions or discussion from Board members, the following motion was presented.

On a motion by Attorney Taylor and seconded by Dr. Schneider, the Board of Health voted to approve the request by Phoenix Fruit & Vegetables as stated with the caveat that they are required to take the classes on one of the two days in March noted above. The vote was 5-0-0.

Agenda Item 3 – Discussion – Floor Drain Regulation

Mr. Canning reported that on January 21, 2010 there was no one present from the public for the Public Hearing to discuss the proposed Floor Drain Regulation. However, Mr. Fuller was present for the discussion and Mr. Carron arrived during the discussion. He also reported that the Health Department had not received comment from anyone regarding the proposed Floor Drain Regulation.

Mr. Canning reiterated that the regulations are required prior to approval of Orleans' Well No. 8. It is required that floor drains located in the zone of contribution be prohibited and that all existing floor drains be removed. The Board of Health discussed and agreed that floor drains are a threat to the groundwater, therefore decided to immediately apply the new regulations to Districts 1 and 2, then throughout the entire town. Mr. Canning explained that he had revised the regulation to reflect the definitions of Districts 1 through 4 to comply with Chapter 164, Zoning §164-17.

Board members discussed an effective date of July 1, 2010. They also discussed the number of existing floor drains in Orleans as well as the cost to remediate those properties. Mr. Canning responded that there are approximately 300 commercial properties in Orleans, and of those, a small percentage might have floor drains. It was noted that the most expensive remedies would most likely involve oil/water separators in which case the material must be removed and properly disposed. He noted that those situations could be even more expensive if any of the contaminant has reached the soil or groundwater. The location of the town facilities was discussed and it was suggested that although they are not in District 1 or 2, town garages should be encouraged to remove their floor drains.

On a motion by Ms. McKusick and seconded by Attorney Taylor, the Board of Health voted to adopt the Floor Drain Regulation as provided in this meeting packet dated February 4, 2010. The Floor Drain Regulation will become effective on July 1, 2010 and was adopted on February 4, 2010. The vote was 5-0-0.

Agenda Item 4 – Discussion – I/A Technologies

Mr. Canning explained that Board members had asked him to reevaluate the septic systems utilizing I/A technology during the past two years, compiling information regarding frequency of testing and the individual system's ability to meet the recommended limits of nitrogen set by the Board of Health. Agenda Item 4-2 provided a sheet on each property giving that information. He noted that most properties are not in compliance.

Ms. McKusick listed the following statistics:

- Of the 39 property reports there are four properties with state permits for greater than 10,000 gallons per day.
- One property owner applied for I/A technology but it was never installed. That property has a standard Title 5 septic system.
- There are four properties currently under or new construction without any test results to date.
- Of the 30 properties remaining, there are seven with no test limits for nitrogen.
- One I/A system has never been tested.
- One I/A system's test results show extreme variations.
- Fourteen I/A systems are not in compliance with the frequency of testing required by the Board of Health.
- Twelve I/A systems have average test results that are greater than permitted.
- Eight (26%) I/A systems are doing well (testing when required and average test results are within the normal range).

Board members discussed the test results for each of the properties. It was noted that the test results were irregular throughout the report regardless of what type of system was installed. The question was raised

as to whether the information was being recorded properly in the Carmody system. Mr. Canning suggested that he send an informational letter to each property owner reminding them of the conditions required, showing them test results regarding frequency of testing, concentration of effluent, and indicating whether or not they are in compliance. He would encourage them to consult their operator to determine why they were not in compliance with the conditions and what can be done to bring their property into compliance.

Mr. Canning discussed proposed criteria he had suggested for the Board members' review with regard to water quality limits, sampling frequency, whether an operator is complying with the Board of Health regulations for I/A systems, and requests for reduction of testing frequency. Board members discussed whether it is feasible for the Health Department to take on an additional job of monitoring the test results of I/A systems given the reduction in staff and increased workload. Mr. Canning responded that, although it is a lot of work now, once the recordkeeping is established it could be reviewed on an annual basis. It was suggested that the Health Agent utilize a form letter notifying each property owner the reason that their septic system is not in compliance with the Board of Health regulations for I/A septic systems.

Agenda Item 5 – Approve Minutes

The minutes of the Board of Health meeting held on January 21, 2010 had previously been distributed to the Board members for review.

On a motion by Ms. McKusick and seconded by Ms. Christie, the Board of Health voted to approve the minutes of the meeting held on January 21, 2010 as presented. The vote was 3-0-2. Dr. Schneider and Attorney Taylor abstained from the vote because they were not present at that meeting.

Agenda Item 5 – Health Agent's Report

Mr. Canning reported on the following:

Vaccination Clinic

Orleans, along with Eastham and Brewster, held a successful regional clinic on January 27th at the Orleans Council on Aging. At this clinic three different vaccines were offered: H1N1, Seasonal Flu and Pneumonia; with the following results.

H1N1 Total	H1N1 Orleans	Seasonal Total	Seasonal Orleans	Pneumonia Total	Pneumonia Orleans
230	81	94	43	30	13

The Region 4A website was again used for preregistration of residents requesting the H1N1 vaccine. Region 5 (the Health Agents Coalition for the Cape and Islands) has requested that a similar website be developed for use in preregistering residents for seasonal flu vaccine clinics saving the Health Department a great deal of time in preregistering and organizing future clinics.

Rental Housing

On January 12, 2010 the Board of Health and Planning Board met to discuss issues related to housing rentals. At this meeting the issues that were focused on included noise, parking/emergency access and egress, and rental licensing.

Subsequent to that meeting George Meservey and Mr. Canning met with Chief Roy to discuss the Police Department's involvement in responding to complaints of noise as well as parking issues. During our discussion the following was shared by Chief Roy:

- Parking/Emergency Access

The town does have a by-law regarding emergency access requiring a fourteen foot passage. This law is to ensure adequate access over all ways within the town for emergency vehicles. However, the Police Department does not enforce parking on private roads.

There have been incidents in the past of gatherings at residences that have caused an overflow of vehicles onto the street. When the Police are called because a vehicle is obstructing access to a home, they request that the vehicle be moved and have usually obtained compliance.

In the case of a neighborhood association, then the association president can authorize the placement of no parking signs and enforce the towing of a vehicle. The Police will be on hand to keep the peace during the towing.

- Noise

The town has a noise bylaw to deal with issues of excessive noise during evening hours. However, because of the many exceptions included in the bylaw the Police Department relies more heavily on their ability to enforce complaints of disturbing the peace. The Police have the authority to take the property owner to court in the case of a "disorderly house". The owner is responsible for the property and the activities which occur on it.

Chief Roy emphasized the importance of repeated calls from affected residents in order to show a history of noise problems.

Overcrowding

As discussed during the joint meeting on January 12th, existing regulations do not effectively address the "overcrowding" of residential units because of the minimal square footage required per person in a dwelling (a moderate size bedroom of 150 s.f. can sleep three). The boards also discussed that a registration program for rental units would not necessarily give the Town the tools to curtail overcrowding and the work required to inspect and license all rental units in the town would be prohibitive.

Dr. Schneider reiterated his previous concern that given the reduction in staff and increased workload, the current Health Department staff would be unable to take on the additional inspections and licensing of rental units.

It appears that the Town could adopt a general bylaw to regulate certain aspects of rental properties in order to limit occupancy and impacts to the surrounding neighborhood. Draft language for such a bylaw may be as follows:

Chapter 133. Occupancy of Rental Units.

Occupancy of residential rental properties shall be restricted as herein set forth.

- (a) No more than one (1) household and three (3) additional unrelated persons may legally occupy the rental unit.
- (b) No more than two (2) people per bedroom, as determined by the Board of Health records, may occupy the rental unit.
- (c) Off-street parking must be provided of at least one (1) parking space per authorized bedroom.

Attorney Taylor remarked that a bylaw as proposed might cause some people to think that Orleans is an unfriendly town toward renters. Mr. Canning explained that they were looking for a bylaw that could be enforced if necessary. It was suggested that the Board of Realtors might be enlisted to help control the number of occupants in a rental property but it was pointed out that it would not be in their best interest because it would most likely reduce their fee.

Mr. Canning summarized that the information discussed would be helpful for future reference with subsequent complaints. He explained that most complaints received by the Health Department are between tenant and landlord, which they do investigate using the State codes.

Daniels Recycling Company, Inc.

On January 26, 2010 the Orleans Health Department conducted an inspection of Daniels Recycling Facility.

At the time of the inspection the following were found to be in non-compliance:

- Multiple containers were found to not have covers, and other covers being used for containers were mesh, permeable covers and multiple other tarps were damaged with large holes. All container covers must be impermeable.
- Side entrance doors B&C were noted to be open at 7:30 a.m. on February 1, 2010. Mr. Canning reiterated that the Board of Health action on the Modification to the Site Assignment addresses only the Facilities Site Assignment and its conditions. With the exception of the uncovered vehicles entering the facility, all other approvals, modifications of conditions and/or permits needed to make the proposed changes in operation must be received by the appropriate body (State Department, Town of Orleans, Cape Cod Commission, etc.) prior to allowing the modification of the operation. It is Daniels Recycling Company, Inc.'s responsibility to obtain the necessary approvals. Therefore, they are operating in violation of some of their Site Assignment conditions.
- Inside the building a large, pile of unprocessed C&D was noted and estimated to be greater than 600 cubic yards. Per on-site personnel C&D material had not been processed for approximately one month. The Orleans Board of Health Site Assignment states that C&D material will be processed daily to minimize sheltering for vermin.
- During the inspection it was noted that a log is being kept of uncovered vehicles entering the facility. However, it does not contain all the information required by the Board of Health. The log must document the date, time, name of company, name of driver and license plate number of the uncovered vehicle. The driver of the vehicle must be notified that this information is being documented and that the information will be forwarded on a monthly basis to the Police Department and the Board of Health. **As of this date the Orleans Board of Health has not received a copy of the required logs documenting uncovered vehicles entering the facility.**
- Entrance door B was missing refrigerator strips.

Also, the Orleans Health Department has not yet received the required monthly reports for the months of November and December of 2009.

Failure of a Septic System

The Health Department has been asked to review its enforcement of a failed septic system with the Board of Health. The issue at hand is the failure of a cesspool for the addition of a garage.

In the definition of a FAILURE OF A SEPTIC SYSTEM the Board of Health regulations state:

Any septic system shall be considered to have failed when any of the following are met:

- 4) Any of its components consist of a privy, cesspool or a converted cesspool which have been identified during an inspection for the sale of property, a change in use, or for a **building permit resulting in an increase in flow, increase in square footage, or a change of footprint.**

The question discussed was whether the Board of Health considers the addition of a garage (detached or not detached) as an increase in square footage or a change of footprint.

Mr. Canning explained that during previous reviews the Health Department has considered the addition or increase of an attached garage to be an “increase in square footage or increasing the footprint”. In the case of a detached garage addition, it would have a foundation structure, would it still be considered an “increase in square footage or increasing the footprint”?

Board members pointed out that an addition or increase of a garage is counted in the square footage calculation when calculating the building square footage to land square footage ratio. Mr. Canning explained that the Board of Health regulations address the issue of collapsing cesspools when square footage is increased; and additional square footage of a garage would not have any effect on the flow to a cesspool.

Board members discussed that it would be to the owners’ advantage to take the opportunity to improve their septic system while construction is taking place. They could also be required to establish escrow accounts for replacement of the cesspools should they fail. It was suggested that the property owner meet with the Board of Health to discuss their particular issue.

Mr. Canning reiterated that in the future the Board of Health would consider an addition of or increase in garage space as an “increase in square footage”.

NSTAR Operational Plan for the Use of Herbicides on Power Lines

Mr. Canning distributed a study conducted by Robert Rich of the 2009 NSTAR Operational Plan for the Use of Herbicides on Power Lines. Mr. Rich is the Board of Health liaison from the Board of Water and Sewer Commissioners. Mr. Canning also received the 2010 report and noted that the area to be treated in 2010 may pass through the town’s watershed area. He explained that the area to be treated will avoid Zone 1 as defined by the State (400 feet around the well), but it is in District 1 (town-owned watershed area). Dr. Schneider remarked that it might be more economical and less troublesome to have NSTAR bury the overhead wires to eliminate the need for maintenance of the ground under the transmission wires. Mr. Canning offered that burying the transmission wires might not eliminate the need to maintain the right-of-way, but it would certainly be advantageous during storms to have all power lines underground.

Agenda Item 7 – Old and New Business / Review Correspondence

7 – 1 A letter from the Department of Public Health to Chief Roy regarding an unsafe condition at the jail had previously been distributed to the Board members for review and discussion.

7 – 2 A Hearing Notice from the Cape Cod Commission regarding the Ocean Management Planning District of Critical Planning Concern Nomination had previously been distributed to the Board members for review and discussion.

7 – 3 Coastal Engineering Company’s response the State regarding the proposed development of 257 Route 6A had previously been distributed to the Board members for review and discussion.

7 – 4 The Orleans, Brewster, Eastham Groundwater Protection District Board of Managers meeting minutes of December 11, 2009 had previously been distributed to the Board members for review and discussion. Ms. Christie remarked that it appears that Orleans does not intend to renew the Intermunicipal Agreement and Mr. Carron responded that Orleans proposes to take ownership of the plant 2015.

7 – 5 A report from Stearns & Wheeler of the Quarterly Gas Sampling Results at the Orleans Transfer Station had previously been distributed to the Board members for review and discussion. Mr. Canning reported that the Transfer Station is in full compliance with the requirements for gas sampling.

7 – 6 A letter from the Conservation Commission dated January 28, 2010 regarding NSTAR Electric Right-of-Way Maintenance Activities had previously been distributed to the Board members for review and discussion.

7 – 7 A letter from Wall Septic Services reporting on inspections completed in late October had previously been distributed to the Board members for review and discussion. Mr. Canning discussed that the Board of Health had previously required the Golden Eagle Condominiums to have the cesspools inspected for structural integrity or for hydraulic failure. He suggested that he request the Condominium Association to come before the Board of Health to discuss this report.


7 – 8 An excerpt from the State Building Regulations regarding Minimum Dimensions for Habitable Rooms excepting kitchens had previously been distributed to the Board members for review and discussion. Mr. Canning noted that this part of the State regulations is not considered when counting rooms. He suggested that the Board of Health include this definition in its regulations and that they not count as a room any area less than seven (7) feet wide at a height of five (5) feet.

7 – 9 A list of Remaining Board of Health Minutes had previously been distributed to the Board members for review and discussion. It was noted that there are only three remaining sets from 2005.

Agenda Item 8 – Adjournment

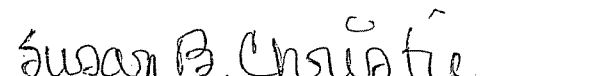
On a motion by Attorney Taylor and seconded by Dr. Schneider, the Board of Health voted to adjourn this meeting of the Board of Health at 2:49 p.m. The vote was 5-0-0.

Respectfully submitted,

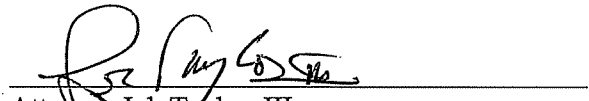

Lynda M. Burwell, Board Secretary

ORLEANS BOARD OF HEALTH

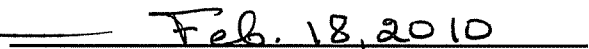
Robin K. Davis, Ph.D., Chairman


Susan B. Christie

Augusta F. McKusick, Vice Chairman


Attorney Job Taylor, III


Jan Schneider, M.D.

 Feb. 18, 2010
Date Approved/Accepted