

## TOWN OF ORLEANS – BOARD OF HEALTH

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### MINUTES OF MEETING

April 1, 2010

The Board of Health convened its meeting at 2:03 p.m. on Thursday, April 1, 2010 in the Skaket Meeting Room of the Orleans Town Hall.

Present: Chair, Robin Davis, Ph.D., Vice Chair Augusta McKusick, Jan Schneider, M.D., Susan Christie, and Attorney Job Taylor, III; and Erika Woods, Assistant Health Agent. Also present: Mark Carron, Selectman Liaison and Dale Fuller, Finance Committee Liaison.

#### **Agenda Item 1 – Public/Press**

There was no one present for Public/Press.

#### **Agenda Item 6 – Approve Minutes**

The minutes of the Board of Health meeting held on February 18, 2010 had previously been distributed to 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 held on February 18, 2010 as presented. The vote was 3-0-2. Dr. Davis and Ms. McKusick abstained because they were not present at that meeting.**

The minutes of the Board of Health meeting held on March 4, 2010 had previously been distributed to Board members for review.

**On a motion by Ms. Christie and seconded by Dr. Davis, the Board of Health voted to approve the minutes of the meeting held on March 4, 2010 as presented. The vote was 3-0-2. Ms. McKusick and Dr. Schneider abstained because they were not present at that meeting.**

The minutes of the Board of Health meeting held on February 3, 2005 had previously been distributed to 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 February 3, 2005 as presented. The vote was 4-0-1. Attorney Taylor abstained because he was not present at that meeting.**

The minutes of the Board of Health meeting held on February 17, 2005 had previously been distributed to Board members for review.

**Because the current Board does not constitute a quorum of members present at that meeting, a motion was made by Ms. McKusick and seconded by Dr. Schneider, the Board of Health voted to accept the minutes of the meeting held on February 17, 2005 as written and corrected. The vote was 5-0-0.**

The minutes of the Board of Health meeting held on November 17, 2005 had previously been distributed to 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 November 17, 2005 as corrected. The vote was 4-0-1. Attorney Taylor abstained because he was not present at that meeting.**

## **Agenda Item 8 – Old and New Business / Review Correspondence**

8 – 1 A letter from the Mass. Department of Agricultural Resources regarding the nomination of Inspector of Animals had previously been distributed to Board members for review and discussion. Ms. Woods explained that Mr. Duane Boucher had previously been the Inspector of Animals for Orleans and that Mr. Canning and she would act as alternates.

**On a motion by Ms. McKusick and seconded by Dr. Schneider, the Board of Health voted to nominate Duane Boucher to the position of Inspector of Animals for the town of Orleans. The vote was 5-0-0.**

8 – 2 A letter from Stearns & Wheeler reporting that the Bi-Monthly Transfer Station Inspection indicated that the Orleans Transfer Station is in compliance with all of the operating requirements had previously been distributed to Board members for review and discussion.

8 – 3 A letter from Daniels Recycling Company, Inc. to the Orleans Health Department regarding deficiencies noted in the inspection conducted on January 26, 2010 had previously been distributed to Board members for review and discussion.

8 – 4 A letter from the Orleans Health Department to Daniels Recycling Company, Inc. regarding violations noted in the recent inspection conducted on March 19, 2010 had previously been distributed to Board members for review and discussion. Ms. Woods noted the presence of similar violations and noted that the Health Department will increase its frequency of inspections.

8 – 5 A letter from the Mass. Department of Environmental Protection indicating approval of a Tight Tank for **5 Skaket Circle** had previously been distributed to Board members for review and discussion. Ms. McKusick discussed whether the Board of Health had requested a schedule of pumping of the tight tank and water usage. Board members requested that a policy for tight tanks be defined.

8 – 6 A letter from the Orleans Health Department to Kris Rodanas regarding the lack of rabies vaccinations of her dog had previously been distributed to Board members for review and discussion. The owner has been requested to provide additional information to the Health Department.

8 – 7 The Orleans, Brewster, Eastham Groundwater Protection District Board of Managers Meeting minutes for February 12, 2010 had previously been distributed to Board members for review and discussion.

8 – 8 A copy of the approved Orleans Board of Health Habitable Room/Minimum Dimension Policy had previously been distributed to Board members for review and discussion.

## **Agenda Item 7 – Health Agent's Report**

Ms. Woods reported on the following:

### **Licensing**

Ms. Woods explained that the Board of Health has been asked to approve a change of ownership for the Hunan Gourmet located at 225 Cranberry Highway. The new owner is The Great Pacific Company LLC whose president is Huan Chau Liu. The location and number of seats will remain the same.

**On a motion by Attorney Taylor and seconded by Ms. Christie, the Board of Health voted in the matter of the Hunan Gourmet to approve the request for change of ownership and name. The vote was 5-0-0.**

### **Temporary Food Permits**

The Board of Health was asked to ratify a Temporary Food Permit issued for the Family Fun Fair at the Orleans Elementary School requested by Christine Sieger. The event was held on Saturday, March 20, 2010 from 10:00 a.m. to 1:00 p.m. Pre-packaged popcorn, Nutri-Grain bars, water and juice were served.

All items were pre-packaged and store-bought. Everything was served using single-use articles. Restrooms and hand washing facilities were available onsite.

**On a motion by Dr. Schneider and seconded by Ms. McKusick, the Board of Health voted to ratify a Temporary Food Permit for the Family Fun Fair held at the Orleans Elementary School on Saturday, March 20, 2010 from 10:00 a.m. to 1:00 p.m. The vote was 5-0-0.**

### **Agenda Item 2 – Variance Request – 9 Sea Mist Drive**

Mr. Robert Perry of Cape Cod Engineering, Inc. represented Lynn and Alexander MacLellan, owners of the property at 9 Sea Mist Drive. Mr. Perry explained the owner's proposal to expand the kitchen into a great room and that there would be no increase in the number of bedrooms in the dwelling. He discussed the architecture of the addition; in particular the roof line, noting that it would be a hardship if they were required to change the shape of the room in order to meet the ten (10) foot setback from the edge of the existing septic tank. He also discussed the hardship related to the cost of replacing the septic tank or the need to create a strange-looking architectural structure that would be less than the ten foot distance from the existing septic tank to the new addition. Mr. Perry suggested that Board members might require a vinyl barrier between the septic tank and the house; however, he did not feel it was necessary because of the rapid soil percolation rate.

Ms. Woods requested confirmation that the new addition would be completely open to the kitchen. She also explained that there is a '95 Code Reserve Area shown on the plan that would not be affected by the addition.

Board members discussed the age of the septic system. Ms. Woods confirmed that the system was reconstructed in 1992. They also discussed the addition of a vinyl liner as a condition. It was noted that the new addition would be constructed on a crawl space. Because of the proximity of the septic tank to the addition, the area of the septic tank should be marked to prevent construction equipment from driving over it.

There were no abutters present.

#### **Findings regarding 9 Sea Mist Drive:**

1. It is an existing dwelling with a proposed addition.
2. There is an existing 1992 septic tank with a Reserve Area that will not be affected by this application.
3. The proposed addition will be located on a crawl space not having a full basement that may be "contaminated" by the proximity of the septic system.
4. There is no increase in the number of bedrooms.
5. This is a hardship for the homeowners because it would be expensive to replace the septic tank even if it is older.
6. It would be a visual and architectural hardship.

**On a motion by Ms. McKusick and seconded by Dr. Schneider, the Board of Health voted to grant the variance requested for 310 CMR 15.211 and the Orleans Subsurface Sewage Disposal Regulations to allow a two (2) foot relief from the ten (10) foot requirement for setback to septic tank. Conditions are that a vinyl barrier be installed and the septic system must be marked out so heavy equipment cannot damage it during the construction. The vote was 5-0-0**

### **Agenda Item 3 – Variance Request – 42 Jack Knife Point Road**

Mr. Andrew Grover of Ryder & Wilcox represented James and Caroline Macon (also present), owners of the properties at 40 and 42 Jack Knife Point Road. He reviewed that the Board had approved the leach field for the subject property being located on the adjacent lot last August. Mr. Grover explained their

request for a variance to allow the installation of a ground source heat pump supply well and discharge well on 40 Jack Knife Point Road adjacent to 42 Jack Knife Point Road where the Macon's are currently building a dwelling. He proposed recording an easement around the proposed wells until the property lines can be restructured in the future, at which time all components will be located on the same lot as the dwelling. Mr. Grover requested a variance to the Orleans Board of Health Private Well Regulations, Section II. C) 2) requiring all wells to be located on the property to be served.

Upon request, Mr. Grover explained that the heat pump system would be an open loop system that would pump the water into a heat exchanger to both heat and cool the house. The water would run through the system from a supply well then to a discharge well.

Ms. Woods commented that both the supply and discharge wells are non-potable wells and the two properties are owned by the same couple. She also mentioned the requirement to have a ten (10) foot separation between the wells and the water line.

Board members discussed the percentage of the second lot that will be used and how much of the second lot would be available to build upon in the future. Mr. Grover explained that initially there is no intent to sell the additional lot, but if it were sold there would be plenty of area left on which to accommodate a dwelling and septic system setback to the dwelling and room for public water supply and other utilities.

David Lyttle of Ryder & Wilcox, also present representing the Macon's, discussed that the property is registered and any change in property lines would need to be changed through the Land Court. However, for personal reason, the owners have elected to wait to complete the process of adjusting the property lines.

There were no abutters present.

#### **Findings regarding 42 Jack Knife Point Road:**

1. The proposed geothermal well system will be located on the adjacent lot to the lot that the house is being built on which is Parcel 72 and the geothermal wells will be on Parcel 71.
2. It is the intention of the family to change the property lines, but in the meantime, there will need to be an easement recorded to accommodate the heating system crossing the property lines.
3. The owner requested a variance from the Orleans Board of Health Private Well Regulations, Section II. C) 2) for a proposed ground source heat pump supply well and discharge well to be located on an adjoining parcel under common ownership. This is a variance to the requirement that all wells shall be located on the property to be served.
4. This is a family property. Because of the location of the house where the property slopes toward the coastal bank, and the 100 foot buffer runs through the location of the house further restricting the placement of a geothermal system.
5. The proposed wells for the geothermal heat pump system will utilize a non-potable water source.

On a motion by Ms. Christie and seconded by Dr. Schneider, the Board of Health voted in the matter of 42 Jack Knife Point Road to approve the variance to allow the ground source heat pump supply well and discharge well to be located on an adjoining parcel under common ownership. The vote was 5-0-0.

#### **Agenda Item 4 – Bedroom Determination – 4 Sparrow Lane**

Attorney William Riley represented Norman and Joy Deschene (also present), owners of the property at 4 Sparrow Lane and introduced Mr. Jim Haggerty of Reef Realty. Attorney Riley explained that Reef will be constructing a bedroom over the garage. Upon inspection, the Health Agent noted that the door configuration to the sunroom/dinette was changed from the originally-approved building plans. During the

original construction the previous owner wanted more cabinets and rearranged the kitchen layout without notifying the Building Department. The present owner feels that because there is no closet, the large number of windows, and entrance directly from the kitchen there is not sufficient privacy to meet the criteria as a bedroom.

Mr. Haggerty explained that the room was constructed and intended to be used only as a dinette. There are constraints to opening up the roof to install skylights because of the hip roof which is constructed of cedar shingles. Installation of skylights would not be sufficient to meet the forty (40) percent glazing requirement. He also explained the structural support of the bearing wall that would need to be reinforced if it was necessary to open up the wall.

Ms. Woods commented that the property is limited to a maximum of four bedrooms because of subdivision restrictions.

Board members discussed the hot air heating that would not make the sunroom/dinette conducive to bedroom use. It was noted that there is a loft that is open to the foyer. The new room above the garage would become the fourth bedroom if it was determined that the sunroom/dinette did not meet the criteria of a bedroom.

There were no abutters present.

#### **Findings regarding 4 Sparrow Lane:**

1. **This matter is before the Board of Health because the sunroom/dinette has been built slightly different from the original plans and may now be classified as a bedroom because it does not meet the stringent criteria for a sunroom that cannot be classified as a bedroom.**
2. **It does not meet the sunroom criteria. However, in every other respect it does look like a breakfast nook or a sunroom, located off the kitchen.**
3. **The only access is through the kitchen.**
4. **The sunroom is glazed on three sides**
5. **It would not be comfortable as a bedroom.**
6. **This dwelling will become a four-bedroom home, which is the maximum allowed in the subdivision, when the bedroom above the garage is completed.**

**On a motion by Dr. Schneider and seconded by Ms. McKusick, the Board of Health voted in the matter of 4 Sparrow Lane that the sunroom/dinette off the kitchen is not to be listed as one of the four bedrooms. The vote was 5-0-0.**

#### **Agenda Item 5 – Approval Request – Orleans Farmers’ Market**

Ms. Gretel Norgeot, manager of the Orleans Farmers’ Market, and Darnell Caffoni, market community member, discussed the 2010 Farmers’ Market. Ms. Norgeot outlined the arrangements for this year’s farmers’ market in Orleans noting that there are no changes in products or vendors, and requested approval from the Board of Health.

Ms. Woods explained that the state is formalizing a policy from the pilot program in 2009 for the sale of shellfish at a Farmers’ Market and expects to have that policy soon. She noted that the Board of Health has approved the sale of shellfish in the past and it would not be necessary to repeat that hearing.

Board members discussed that in the past each vendor was required to obtain a variance. However, the Board of Health had granted a blanket approval for the organization and Ms. Norgeot had taken the responsibility to review each vendor’s credentials. Ms. Woods explained that the state policy suggests that retail vendors be licensed individually. Prior to last year the Board of Health approved the Farmers’ Market but didn’t license it. In 2009 the Board of Health permitted the entire Farmers’ Market under a Retail and Food Establishment Permit. It was suggested that the Farmers’ Market Committee consider appointing someone certified as a Food Protection Manager. Ms. Norgeot explained that the individual food

vendors are certified, and that she had been Food Safe Certified in the past, but not currently because of the expense. It was suggested that at least one member of the committee be certified.

It was also recommended that a portable hand-washing station be available near the food vendors.

**On a motion by Ms. McKusick and seconded by Dr. Schneider, the Board of Health voted to grant a seasonal Food Establishment and Retail Food License to the Orleans Farmers' Market and have them designate a person in charge. The License shall start on May 1, 2010 and end on November 27, 2010. The Board also grants a variance for the requirement to have physical facilities. The vote was 5-0-0.**

### **Agenda Item 7 – Health Agent's Report (cont'd.)**

Ms. Woods reported on the following:

#### **Bathing Beaches**

On March 12, 2010 the Health Department received notification that the Department of Public Health has amended its Bathing Beach Regulations. The new regulations include provisions for the licensing of beaches, requirements for signage and changes to the requirements for posting the beaches when they are closed or the water is not being sampled during the off season.

The State Sanitary Code Chapter VII defines a bathing beach as "land where access to the bathing water is provided. It shall not mean a swimming pool as defined in 105 CMR 435.00: Minimum Standards for Swimming Pools".

In 2001 the Board of Health identified **12 public areas** in Orleans that meet the definition of a bathing beach and the beach water sampling has been monitored at these sites since that time.

Nauset Beach  
Skaket Beach  
Crystal Lake  
Pilgrim Lake  
Meeting House Pond  
Pleasant Bay

Bakers Pond  
Town Cove  
Paw Wah Point  
Kent's Point  
Priscilla's Landing  
Rock Harbor

In 2001 the Board of Health also identified three **semi-public beaches** which are privately owned:

Inn at Pleasant Bay  
Quanset Harbor Club  
Skaket Condominium Association

The cost of collecting and sampling these privately-owned, semi-public beaches is paid for by the property owners.

The amendments to the Bathing Beach regulations are as follows:

- Each beach must be licensed by the Board of Health. This process includes the completion of an application (prior to April 26, 2010) and subsequent approval of a permit to operate the beach.
- Signs must be posted at each beach which must include the following information:
  - Permit number
  - Dates of operation
  - Name and telephone number of beach operator
  - A statement that the beach is not monitored for bacteria outside the dates of operation.
- Bathing beaches must have a bacteriologic sample taken as follows:

- Within **five days immediately preceding the opening** of the bathing season
- Weekly during the bathing season (unless a variance has been granted)
- Prior to reopening a beach after closure due to the presence or suspected presence of elevated bacteria.
- When a beach is closed for conditions solely related to physical hazards (currents, sharp drop offs, unstable bottom etc.) a sign must be posted at the entrance to each parking lot and each entrance to the beaches stating:

**WARNING! NO SWIMMING  
SWIMMING MAY CAUSE INJURY**

The regulation does allow for the Board of Health to charge a permit fee for the bathing beaches; unfortunately, 80% of the Orleans beaches are owned by the town, limiting revenue. The Board of Health would have to advertise and hold public hearings to charge a fee and would likely not have time to accomplish this for this season.

This will increase the work load on the Health Department for more permitting and coordinating with other departments especially during closures. For this year the County has offered to take care of the permit application forms for the semi-public beaches as they have to contact these people for testing anyway. The Health Department will have to grant the permits and post appropriate signage, etc. The Board of Health will have to approve the applications and could vote today to approve them pending receipt of proper paperwork.

Board members discussed the day of the week the County would conduct its testing and Ms. Woods expected it might be done on Tuesdays in Orleans. She also noted that considerable additional expense will be involved for applications, paperwork, and posting of signs.

**On a motion by Dr. Davis and seconded by Dr. Schneider, the Board of Health voted to approve the permits for all public and semi-public beaches in the town of Orleans pending receipt of the proper paperwork. The vote was 5-0-0.**

**Adult Immunization Clinic**

The town has an opportunity to hold an adult immunization clinic. The Department of Public Health is purchasing adult vaccines through the American Recovery and Reinvestment Act (ARRA) funds. These vaccines must be ordered by June 2010. Available vaccines include:

- HPV vaccine (human Papillomavirus (cervical cancer)) for women 19-26 years of age.
- Tdap vaccine (Tetanus, diphtheria acellular pertussus) for adults 19 through 64 years of age.
- Varicella vaccine (chickenpox) for adults 19 years of age and older.
- Zoster vaccine (shingles) for adults 60 years of age and older.

Also available are:

- Hepatitis A vaccine
- Hepatitis B vaccine
- MMR vaccine (Measles, Mumps, Rubella)
- Pneumococcal polysaccharide vaccine (pneumonia)
- H1N1 vaccine

The Health Agents Coalition has also made funds available for the hiring of nurses for regional clinics. To take advantage of this offer The Health Agents Coalition is pursuing the potential of hosting a regional adult clinic in early May. It is their intention to offer, at a minimum, H1N1 and Zoster (shingles vaccine) at this clinic. It is quite likely that they will be offering additional vaccines as well.

The Health Department hopes to conduct registration on-line as they did with the H1N1 flu clinics.

Ms. McKusick emphasized the need to vaccinate adults against shingles because it is such a disabling disease.

**Ms. Woods expressed appreciation to Bonnie Campbell and Lynda Burwell for completing the backlog of old minutes. Today's approvals of minutes brought the Health Department up to date!!**

Board members discussed that there were approximately three years' worth of old minutes dating back to 2004.

**New Business**

Mr. Carron requested a copy of the new beach regulations.

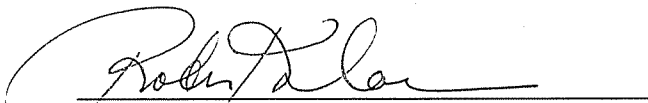
**Agenda Item 8 – Adjournment**


**On a motion by Dr. Schneider and seconded by Ms. Christie, the Board of Health voted to adjourn this meeting of the Board of Health at 3:09 p.m. The vote was 5-0-0.**

Respectfully submitted,

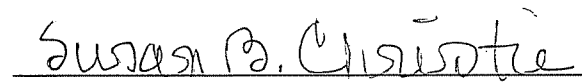
  
Lynda M. Burwell, Board Secretary

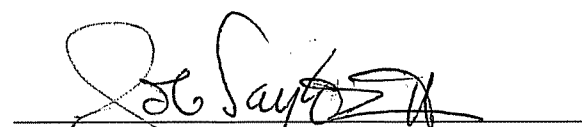
**ORLEANS BOARD OF HEALTH**

  
Robin K. Davis, Ph.D., Chairman

  
Augusta F. McKusick, Vice Chairman

  
Jan Schneider, M.D.

  
Susan B. Christie

  
Attorney Job Taylor, III

April 15, 2010  
Date Approved/Accepted