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## TOWN OF ORLEANS – BOARD OF HEALTH

### MINUTES OF MEETING

June 3, 2010

The Board of Health convened its meeting at 2:05 p.m. on Thursday, June 3, 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., and Attorney Job Taylor, III; and Robert Canning, Health Agent. Also present: Susan Christie, Liaison from the Board of Selectmen and Dale Fuller, Liaison from the Finance Committee.

Dr. Davis paid tribute to the late Paul Kirby, a close friend of hers and great intellect, who had regularly watched the Board of Health meetings.

Dr. Davis suggested that the Board of Health consider meeting once a month during the summer through September.

**On a motion by Attorney Taylor and seconded by Dr. Schneider, the Board of Health voted to meet once each month on the first Thursday through September. The vote was 4-0-0.**

Dr. Schneider discussed whether the first Thursday would inconvenience the Health Agent or his staff. Mr. Canning noted that the first Thursday in July falls on July 1<sup>st</sup>.

**On a motion to modify by Attorney Taylor and seconded by Dr. Schneider, the Board of Health voted to meet once each month through September on the second Thursday of each month. The vote was 4-0-0.**

Dr. Davis expressed appreciation to her colleagues on the Board of Health, as well as Ms. Christie who has been elected to the Board of Selectmen, and to the Health Agent and his staff for their assistance during her term as Chairman.

#### **Agenda Item 1 – Board of Health Reorganization and Appointments**

Dr. Davis opened the meeting for nominations for the office of Chairman of the Board of Health.

**Nominated by Ms. McKusick and seconded by Dr. Schneider, the Board of Health voted to elect Attorney Job Taylor, III to serve as Chairman of the Board of Health. There were no further nominations. The vote was 3-0-1 with Attorney Taylor abstaining.**

**Nominated by Dr. Davis and seconded by Attorney Taylor, the Board of Health voted to elect Augusta McKusick to serve as Vice Chairman of the Board of Health. There were no further nominations. The vote was 3-0-1 with Ms. McKusick abstaining.**

At this point Attorney Taylor chaired the meeting of the Board of Health.

#### **Agenda Item 2 – Public/Press**

There was no one present for Public/Press.

#### **Agenda Item 3 – Hearing Request – Definitive Subdivision of 40 Tom's Hollow Road**

Mr. Brad Malo of Coastal Engineering Company, representing Tom and Trish Kennedy (owners), was present to discuss the Definitive Subdivision Plan for 40 Tom's Hollow Road under the name of Captain Harry Hunt LLC which they wish to divide into two lots. There is an existing six-bedroom dwelling on property and they are pro-

posing a second lot near the street of just over 50,000 square feet of upland. Coastal Engineering has submitted the Definitive Subdivision plan as well as layouts showing the existing wells and septic systems and those proposed on the new lot. He suggested that the lot layout would allow compliance with all Board of Health regulations.

Mr. Canning noted that in 2007 the Board of Health heard a request for subdividing two lots into four which involved both 40 and 50 Tom's Hollow Road. Subsequently, the property at 50 Tom's Hollow Road has been sold. During review of that subdivision the Board of Health granted approval with conditions: inspection of the house at 40 Tom's Hollow Road; inspection of the existing septic systems for adequacy for the number of bedrooms served; town water must be provided to the lots; condition for the number of bedrooms on each lot; when vacant lots were to be developed, a nitrogen-removing septic system must be installed. Title 5 requires that all existing septic systems be inspected any time a property is divided. With regard to #40, the septic system was designed for a six-bedroom dwelling. However, a site visit in 2007 showed the existence of seven bedrooms since a partition in the basement created the seventh bedroom. If the partition was removed the Board of Health might consider that the larger room does not meet the criteria of a bedroom. That situation has not been resolved to date. However, the Board of Health has granted extensions pending resolution of litigation.

Attorney Taylor stated that consideration of the proposed subdivision plan is a premature request because the previous conditions have not been met. Mr. Canning explained that this plan is part of the resolution of pending litigation. Attorney Taylor disagreed because there were requirements put on the client in the past; and because of the continuing existence of the seventh bedroom in the house, he opined that this hearing is premature.

Mr. Malo explained that the existing lot of 166,000 square feet is sufficient for handling sixteen bedrooms. Attorney Taylor reiterated that the client has not complied with the previous requirement. Mr. Malo noted that he was unaware of an existing order; and that the mechanism for whether or not the house is in compliance is an inspection of the septic system.

Mr. Canning discussed that on January 30, 2008 a notice of non-compliance was written to the owner. On February 29, 2008 the owner asked for and was granted a one-year extension. In April 2009 the Board of Health granted an additional extension. In response to a question, Mr. Canning explained that at house #50 there was new construction which raised a question of the number of bedrooms. House #40 had several building permits showing an unfinished cellar, and upon inspection there was a finished basement with a bedroom.

Board members discussed that the issue before the Board of Health is to comment to the Planning Board; and those comments will be addressed by the Planning Board. However, there has been history with this applicant where loose ends are tied up on one side and not the other. The issue of the seventh bedroom must be rectified, and it is apparent that minor construction to remove one wall will suffice to eliminate the bedroom. Because the owner did not apply for another extension this year, they must be required to bring the dwelling into compliance with the building permit records.

**On a motion by Ms. McKusick and seconded by Dr. Schneider, the Board of Health voted in the matter of 40 Tom's Hollow Road to report to the Planning Board on their request for comment on the subdivision. That the Board of Health, as per plans presented to them, is in agreement that an area has been located on Lot A for a legal septic system, areas on the map have been delineated for wells, both of which delineations protect the public health. We will approve this on the condition that the full order of compliance that was issued over two years ago that the house on Lot B come into full compliance by removing the partition to create a six-bedroom structure before these things are finalized. The vote was 4-0-0.**

Mr. Malo commented that the applicant has continued to apply for extensions while litigation continued. He suggested that the owner could file a deed restriction restricting the house to six bedrooms. The applicant intends to bring the house into full compliance and is trying not to be unreasonable. Attorney Taylor noted that if the applicant had applied for another extension this issue would have been resolved. Mr. Malo requested that this matter be continued to the next meeting to allow the applicant to rectify the situation of the seventh bedroom.

Ms. McKusick reiterated the legal response to the Planning Board. Mr. Canning confirmed that the wall must be removed (with a Building Permit) in order to bring the house into compliance. Mr. Malo inquired if there was

any indication that the room was used as a bedroom; to which Mr. Canning remarked that there was no evidence showing what it was used for.

Because of a conflict with another meeting, Ms. McKusick requested that the Board of Health review the minutes listed on the agenda at this point.

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

The minutes of the Board of Health meeting held on May 6, 2010 had previously been distributed to Board members for review.

**On a motion by Ms. McKusick and seconded by Dr. Davis, the Board of Health voted to accept the minutes of the meeting held on May 6, 2010. The vote was 4-0-0.**

The minutes of the Board of Health Special Meeting held with the Board of Selectmen on May 19, 2010 had previously been distributed to Board members for review.

**On a motion by Ms. McKusick and seconded by Dr. Schneider, the Board of Health voted to approve the minutes of the Board of Health Special Meeting held with the Board of Selectmen on May 19, 2010. The vote was 4-0-0.**

The minutes of the Board of Health meeting held on May 20, 2010 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 May 20, 2010 as corrected. The vote was 3-0-1. Attorney Taylor was not present at the meeting.** Dr. Schneider noted an inaccuracy in the minutes which will be corrected by the clerk.

### **Agenda Item 4 – Approval Request – 4 Etta's Way**

Mr. David Lyttle of Ryder & Wilcox was present to represent Mary Allen Bradley, owner of the property at 4 Etta's Way. Ms. Bradley would like to be allowed to have a residential darkroom in her home. Mr. Lyttle explained that the proponent would like to construct a new garage/artist studio on her property and connect it to an existing 1978 code septic system. The new building would contain a conservatory and artist studio with a dark room in it. The existing septic system has a 1000 gallon tank, distribution box and an H-20 leach pit sized for three bedrooms which passed an inspection in 2006. The conservatory, which will be used for plants, will have a half-bath on the first floor. There are many windows and skylights in the conservatory. The artist studio on the second floor will be used for developing photographs using a dark room. The proponent has no intention of using either of these areas as bedroom facilities, and to ensure this, there are no bathing fixtures or doors closing off the conservatory or studio from the south entrance to the garage. In addition, a deed restriction on the property will be recorded stating that no finished rooms in the garage or basement will be used as bedrooms, and there will be no more than four bedrooms on the property. However, while the property is large enough to allow four bedrooms, the current house has three bedrooms and the septic system is designed for three bedrooms. The proponent requests Board of Health approval to connect the proposed garage/studio to the 1978 code septic system. Mr. Lyttle noted that they have submitted a floor plan showing an office which could meet the criteria as a bedroom. Included in the Building Permit is opening that doorway to become a six-foot cased opening. Also included in the application is a Guidance Plan for storage and disposal of photographic chemicals and the owner will utilize the town's disposal of hazardous waste program.

Mr. Canning inquired whether the loft is accessed through the master bedroom or the attic. It was noted that a ladder from the master bedroom accesses the loft area. The Housing Code would not allow the proposed rooms to be called bedrooms because of a lack of internal bathing facilities.

Board members discussed that it would be appropriate to approve this request with the proposed conditions. However, they discussed whether storage of photo chemicals for an extended period would present any danger. Mr. Lyttle opined that he doesn't think they would be hazardous. The dark room and necessary chemicals are only for use as a hobby.

Ms. McKusick retired from the meeting at 2:45 p.m.

Concern was expressed that there is considerable water usage at the property although there are only three bedrooms. This situation shows the limitations of using a bedroom as the criteria for design of a septic system near a fragile wetland. Mr. Canning explained that use of the dark room is primarily for the owner/occupant. He acknowledged that there might be greater water usage for hand washing because of the dark room. It was noted that as long as this septic flow is connected to 1978 code system only three bedrooms will be allowed.

Mr. Lyttle noted that he discusses with Mr. Canning approximately once a week as to how to work within the regulations to accommodate his clients' plans.

**On a motion by Dr. Davis and seconded by Dr. Schneider, the Board of Health voted in the matter of 4 Etta's Way to approve the connection of a new garage/studio to a 1978 code septic system. Findings are that there will be no increase in the number of bedrooms or flow; and that if there is such an increase, the deed will limit the property to four bedrooms and they will have to upgrade the system in the case of any such increase in flow. The vote was 3-0-0.**

### **Agenda Item 5 – Discussion – Future Solid Waste Disposal Costs and Transfer Station Fees**

Mr. Canning reviewed for the Board members the discussion with the Board of Selectmen on May 19, 2010 and suggested that this Board discuss how to proceed on the matter of transfer station fees.

Attorney Taylor raised the issue that sticker shock is a great concern because Orleans has the oldest population in Massachusetts and most residents will be very upset if they see an approximate \$40 increase in fees. He suggested that the Board of Health hold a public hearing to explain to the residents that this isn't something Orleans can control and administration is not sure what Orleans can negotiate in 2015. He proposed that for the next four years the Board increase the price \$7.50 per year, then in the last year increase it by \$8 – \$10. The Town could create an account that would accrue interest to help decrease the sticker shock in 2015.

Dr. Schneider agreed with a three-prong approach with gradual increases; establishing a special account that offsets the major increase; and having a public hearing for educational purposes.

Dr. Davis opined that the Boards should consider this matter in a broader context than just cost. She suggested that before the public hearing this Board should consider what other towns are doing and present different options. She described the system used in Natick where residents purchase different colored bags for their solid waste, essentially a pay-as-you-throw system that encourages recycling. She also suggested that this Board should be thoroughly familiar with any possible agreement regarding maximum and minimum loads, and also work with private haulers on this issue.

Mr. Canning commented that in the original SEMASS contract there was a provision for a minimum or maximum amount of solid waste brought to SEMASS. Some commercial haulers are going to Yarmouth resulting in a major decrease in Orleans' loads sent to SEMASS. Any agreement has a minimum and maximum. Currently at the Orleans transfer station there are very few commercial haulers discharging, but they may want to resume discharging in Orleans if they are charged a higher fee elsewhere as individual haulers. The Town will need to study the long-term solid waste stream and consider that information in any future agreements. Also, Mr. Canning pointed out that if commercial rubbish collection companies exorbitantly raise their rates to homeowners because of their own increased contract costs, those people may start bringing their trash to the landfill again.

Attorney Taylor acknowledged that there are many side issues to be considered before signing a contract. He expressed concern that some seasonal renters might not purchase a sticker (or use the owner's), and then might discard their trash in the woods. He was anxious to get some education going now, not wait until December to discuss the rates for 2011.

Dr. Davis suggested calculating a rate increase for next year now and then discussing further the possible solutions to the solid waste disposal issue for the future. Dr. Schneider inquired as to the volume of the waste stream could be recycled. Mr. Canning suggested observing the successes of other towns in Massachusetts and noted that Orleans' rate of recycling should be very similar.

Ms. Christie noted that the Board of Selectmen is looking forward to another joint meeting. Attorney Taylor requested that Ms. Christie report to the Board of Selectmen this discussion about an increase in transfer station fees for next year as well as Dr. Davis' suggestion to encourage more recycling.

Dr. Davis mentioned that she expects that Orleans' recycle rates will not be as high as other towns because in Orleans there is no incentive to recycle; pay-as-you-throw provides an incentive to reduce the amount of trash people dispose of. Mr. Canning reported that previously that system was confusing because people didn't understand how it would affect the sticker price and tax rate.

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

Mr. Canning reported on the following:

#### **Immunization Clinic**

On May 20, 2010 the Health Department hosted an Adult Immunization Clinic at the Senior Center. At this clinic the following vaccines were administered:

<b><u>Vaccine Type</u></b>	<b><u>Total</u></b>	<b><u>Orleans</u></b>
Shingles (Zoster)	151	43
H1N1	9	3
Hepatitis A	32	17
Hepatitis B	30	16
Td	42	19
Tdap	12	6
MMR	5	1
<b>TOTAL</b>	<b>281</b>	<b>105</b>

The clinic ran very smoothly. Mr. Canning thanked the Health Department staff, the Barnstable County Health Department, the Cape Cod Medical Reserve Corps and the Council on Aging for making this clinic a success. He noted that the only disappointment was that the Zoster vaccine was all reserved within the first few hours and many people were disappointed.

#### **Beach Closure**

On June 2, 2010 the Health Department had to close the beach at Rock Harbor to swimming. This closure was necessitated by an elevated bacteria count (>400 Enterococcus CFU/100ml). The beach has been re-sampled and we are awaiting the results.

#### **Daniels Recycling Company, Inc.**

The Health Department has received the monthly operational report from Daniels Recycling Company, Inc. for the month of April 2010. The reports were prepared to satisfy the monthly reporting requirements of the DEP's Authorization to Operate, and to satisfy the conditions of the Orleans Board of Health Site Assignment.

In April DRCI received 687 tons of C&D material (31.26 tpd) and 102 tons of brush (4.64 tpd). There were no reported incidents of unacceptable materials found within the tipping floor and no positive results for asbestos. DRCI continues to kick-sort recyclables on the tipping floor such as asphalt, brick, and concrete, metals and cardboard to the maximum extent possible to eliminate them from the waste stream.

Green Seal does note that DRCI is likely over its approved storage capacities as outlined in its financial assurance mechanism and cost estimate. They noted that DRCI is in the process of revising their Financial Assurance plan and will be reallocating capacities based on the commodities that they currently receive and process.

In addition, on May 21, 2010 the Health Department conducted an inspection of the DRCI site. At the time of the inspections the following violations were noted:

- There were no OSHA certified HAZWOPER personnel on-site as required by the Orleans Board of Health Site Assignment. (This has been addressed.)

- Multiple containers were observed without covers, and some of the covers being used for containers were mesh, permeable covers and multiple other tarps were damaged with large holes. All containers must be covered with impermeable covers.
- There remains a significant amount of unprocessed C&D material inside the building. The Health Department approximates the amounts as follows:

Location	Observed amount (cubic yards)	Allowable amount	Complies with established limits
Total @ container Storage Area	842	300 cubic yards	(N)
Recyclables stored in containers	391	Must be removed from site in 60 days	
C&D stored in containers	451	Must be removed from site in 7 days	
Inside the processing building	1671	315 cubic yards	(N)
Unprocessed clean wood waste (brush etc.)	1266	500 cubic yards	(N)
Processed clean Wood waste (chips etc.)	645	1,500 cubic yards	(Y)

- Per the April Green Seal Environmental monthly report, the monthly tonnage of inbound material (C&D and wood waste) exceeded the tonnage of outbound material.
- Incoming Material Weight Logs provided to the Health Department document individuals arriving before 8:00 a.m.

### **Open Meeting Law**

On Monday, June 7<sup>th</sup> at 6:30 p.m. there will be a meeting with Town Counsel Mike Ford and Cynthia May to review the new Open Meeting Law provisions that go into effect on July 1<sup>st</sup>. The session will include a general overview of the Open Meeting Law changes, a discussion of the specific requirements for regulatory boards, committees and commissions, and a question and answer period.

### **Board of Health Vacancy**

Massachusetts General Laws Chapter 41, Section 11, outlines the process by which a vacancy on an elected board is filled until the next annual town election. This procedure includes:

- Board of Health notifying the Board of Selectmen of the vacancy and the desire to fill the position
- Advertising the vacancy in the newspaper
- Meet with the BOS to vote jointly to appoint a new member until the next annual town election.

The Board of Selectmen is meeting on an every-other-week schedule through the summer. After speaking with John Kelly, Mr. Canning suggested a meeting date of July 7, 2010 for the boards to meet to make the appointment.

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

8 – 1 A letter dated May 21, 2010 from the Massachusetts Commissioner of Public Health to the Orleans Health Department congratulating them on a successful H1N1 vaccination program had previously been distributed to Board members for review and discussion.

8 – 2 A notice from the Cape & Islands Renewable Energy Collaborative regarding *Wind Turbines Noise & Health* had previously been distributed to Board members for review and discussion.

8 – 3 A letter from the Orleans Health Department to Cavossa Disposal regarding their Refuse Collection License had previously been distributed to Board members for review and discussion. Mr. Canning reported that they have dumpsters in Orleans and have been collecting rubbish without a permit. He has followed up with a manager and they will be obtaining a license.

8 – 4 A letter from Ryder & Wilcox regarding an application to re-license the existing pier on the property of J. Bruce Hirschberg had previously been distributed to Board members for review and discussion. Mr. Canning explained that this is included in the owner's permit for reconstruction of a house.


8 – 5 An email from Coastal Engineering Company regarding the Cape Cod 5 Bioclere wastewater treatment system had previously been distributed to Board members for review and discussion.

8 – 6 A letter from Coastal Engineering Company regarding the Bioclere wastewater treatment system serving 7, 8, and 9 Skaket Circle had previously been distributed to Board members for review and discussion.

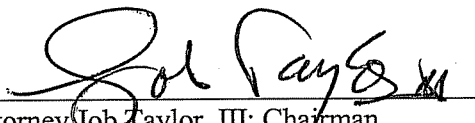
### **Agenda Item 10 – Adjournment**

**On a motion by Dr. Schneider and seconded by Dr. Davis, the Board of Health voted to adjourn this meeting of the Board of Health at 3:18 p.m. The vote was 3-0-0.**

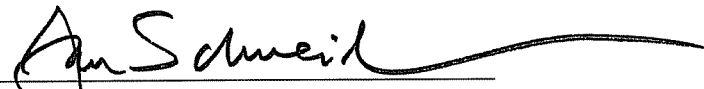
Respectfully submitted,

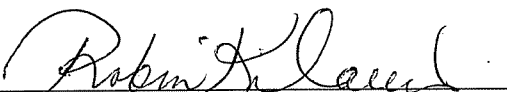
  
Lynda M. Burwell, Board Secretary

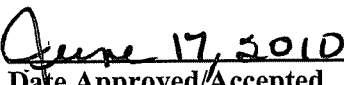
### **ORLEANS BOARD OF HEALTH**

  
Attorney Tob Taylor, III; Chairman

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Augusta F. McKusick, Vice Chairman

  
Jan Schneider, M.D.

  
Robin K. Davis, Ph.D.

  
Date Approved/Accepted

**DOCUMENTS PROVIDED FOR THE JUNE 3, 2010  
MEETING OF THE ORLEANS BOARD OF HEALTH**

**Agenda Item 3**

- 3 – 1 – Hearing Request submitted by Coastal Engineering Company – Approval of Definitive Subdivision Plan
- 3 – 2 – Site Plan C1.1.1 prepared by Coastal Engineering Company – Definitive Plan Being a Subdivision of Lot 4 on Plan Book 303, Page 100 dated 5/21/10, and same document showing Sketch Showing Well and Septic Layout
- 3 – 3 – Orleans Health Department letter dated 1/30/2008 to Captain Harry Hunt House LLC regarding 40 Toms Hollow Road
- 3 – 4 – Orleans Health Department letter dated 6/23/2009 to Captain Harry Hunt House LLC regarding 40 Toms Hollow Road

**Agenda Item 4**

- 4 – 1 – Hearing Request submitted by Ryder & Wilcox – Connect New Garage / Artist Studio to existing 1978 Code septic system
- 4 – 2 – Guidance Plan for Darkroom
- 4 – 3 – Residential darkroom photo chemical information
- 4 – 4 – Site Plan, Site Plan Addendum, and Floor Plans

**Agenda Item 6**

- 6 – 1 – Orleans Board of Health Minutes of Meeting on May 6, 2010
- 6 – 2 – Orleans Board of Health Minutes of Special Meeting with the Board of Selectmen on May 19, 2010
- 6 – 3 – Orleans Board of Health Minutes of Meeting on May 20, 2010

**Agenda Item 8**

- 8 – 1 – Massachusetts Department of Public Health letter dated 5/21/2010 to Orleans Health Department of congratulations and appreciation of their efforts in the H1N1 vaccination campaign
- 8 – 2 – Notice of program on *Wind Turbines – Noise & Health, Fact vs. Fiction* on June 3, 2010.
- 8 – 3 – Orleans Health Department letter dated 5/27/2010 to Cavossa Disposal regarding Refuse Collection License
- 8 – 4 – Ryder & Wilcox letter dated 5/18/2010 regarding the Environmental Notification Form submitted on behalf of J. Bruce Hirschberg to relicense the existing pier on his property
- 8 – 5 – Email from Coastal Engineering Company dated 5/26/2010 to Bob Canning regarding the Cape Cod 5 Bioclere Wastewater Treatment System
- 8 – 6 – Coastal Engineering Company letter dated 5/24/2010 to the Orleans Board of Health regarding 7, 8, and 9 Skaket Circle