

TOWN OF ORLEANS – BOARD OF HEALTH

MINUTES OF MEETING

October 7, 2010

The Board of Health convened its meeting at 2:02 p.m. on Thursday, October 7, 2010 in the Skaket Meeting Room of the Orleans Town Hall.

Present: Vice Chair Augusta McKusick, Jan Schneider, M.D., Robin Davis, Ph.D., and Elizabeth Suraci. Also present: Robert Canning, Health Agent; Susan Christie, Liaison from the Board of Selectmen; and Ed Barr, Liaison from the Finance Committee.

Excused: Chairman, Job Taylor, III

Agenda Item 1 – Public or Press

There was no one present for Public or Press.

Agenda Item 2 – Variance Request – 41 Willie Attwood Road

Mr. John Schnaible of Coastal Engineering represented Ethel Alemian / Bruce Alemian, owner of the property at 41 Willie Attwood Road. Mr. Schnaible explained the need for a variance to be able to install a Sewage Disposal System Upgrade to replace the existing system which consists of cesspools.

1. Local upgrade approval from 310 CMR 15.000, Title 5 to allow a Soil Absorption System to be located five (5') feet from the property line where ten (10') feet are required. A five foot variance is requested.
2. A variance from the Orleans Board of Health Regulations, 185.17.3(D), Set Back Requirements to allow a Soil Absorption System to be located five (5') feet from the property line where ten (10') feet are required. A five foot variance is requested.

Mr. Schnaible explained that this variance request was approved over a year ago on June 4, 2009. He explained that the proponent would like to use an existing well as an irrigation well because the property will have access to town water for the house. The property has two cesspools located near a marsh; therefore, it was proposed to re-plumb the septage piping to the front of the house. A 1500 gallon septic tank, pump chamber, and two leaching trenches will be positioned on the one location available for the septic system 100 feet away from the coastal bank and from a neighbor's well. The house has four bedrooms which will not change although the owner proposes some interior renovation.

Mr. Canning reiterated that this request was before the Board of Health on June 4, 2009 and that the only change was change in use of the well which meets set-back requirements. The variance requested is five feet to the property line; two separate property lines, one to the north and one to the west. There is an enclosed porch which is used as a sunroom with 54 per cent glass which does not meet the criteria of a bedroom.

There were no abutters present.

Board members questioned if this plan as received approval from the Conservation Commission to which Mr. Schnaible affirmed that it was approved on Tuesday (October 5, 2010). Mr. Canning responded to a question about the previous variance hearing explaining the condition imposed at that time if the owner wished to demolish the house and rebuild. Mr. Schnaible explained that right now the new owner plans to make only minor changes. He also explained how the irrigation well will be separated from the new supply from town water.

On a motion by Dr. Davis and seconded by Dr. Schneider, the Board of Health voted in the case of 41 Willie Attwood Road findings are that this Board has already approved this project over a year ago so it needs to be approved once again. The only changes to this proposal are that the current drinking water

well will be converted to an irrigation well and there will be no cross-connection with any of the public water supply. The variance is for five feet to two property lines where ten feet is required. The soil absorption system will be less than ten feet to the property line. I move that we approve this proposal with the same conditions as the ones we had at the previous variance hearing on June 4, 2009. The vote was 4-0-0.

Agenda Item 3 – Bedroom Determination – 246 Tonset Road

Mr. Jason Ellis of J.C. Ellis Design Company, Inc. represented the Estate of Gordon and Helen Nadeau (Kathy Van Tassel, their daughter, also present), owners of the property at 246 Tonset Road. Mr. Ellis explained that Ms. Van Tassel has requested that the Board of Health determine that the property has four (4) existing bedrooms so she can proceed with the installation of a new four bedroom septic system. He noted that the main house has one bedroom on the first floor, and two rooms finished upstairs, and although those two rooms contain sufficient square footage, 120 square feet, they do not have the required ceiling height to meet the criteria of a bedroom. There is also a small studio that has a bedroom and full bathroom, hooked up to a separate cesspool. Ms. Van Tassel has requested a determination that this is a four-bedroom property so she can proceed with construction of a new four-bedroom septic system. Mr. Ellis showed photos of the two bedrooms and the rear of the house showing a dormer. (*Exhibit 3 – 1*)

Mr. Canning discussed the ceiling height issue. He suggested formalizing the two bedrooms and granting a variance to Chapter II of the Housing Code and Title 5 which both require a seven foot ceiling in a bedroom. The current ceiling height in those two bedrooms is six feet eight inches. The Board should grant a variance of four inches and require a deed restriction to be filed at the Barnstable Registry of Deeds.

There were no abutters present.

Board members had no objection to the variance. It was noted that the Assessor's Field Card listed it as a three bedroom house on just over a quarter acre lot.

On a motion by Dr. Schneider and seconded by Ms. Suraci, the Board of Health voted in the matter of 246 Tonset Road to approve all four bedrooms including the two that are six feet in height due to the age of the building and the fact that those two rooms have been used as bedrooms all along they should be called bedrooms. This must be formalized by filing as such with the Registry of Deeds. This is a four inch variance and it should be recognized as such as all documents attest to that. The vote was 4-0-0.

Mr. Canning noted to Mr. Ellis that any time a variance is granted to Chapter II of the Housing Code, the variance is not in effect until it has been recorded at the Registry of Deeds.

Agenda Item 4 – Approval Request – 26 Nickerson Road

Mr. Paul Fulcher, owner of the property at 26 Nickerson Road, was present at this hearing to request relief from the Board of Health Subsurface Sewage Disposal Regulations. He would like to build a 12 foot 6 inch by 12 foot mud room in order to move the washer and dryer from the basement to the first floor. Currently he has a cesspool located 27 feet from the house and a soil absorption system which is 40 feet from the house. All piping for the washer would run to the existing waste plumbing.

Mr. Canning reviewed the regulations defining the failure of a septic system. The proposal is to change the footprint with an increase in square footage; however, with no increase in septic flow. Mr. Fulcher showed proposed design plans (*Exhibit 4-1*) for explanation, and noted that the mudroom would open into the kitchen, dining room, and living room. It would be a twelve foot by twelve foot area that would have four doors and a window. Mr. Canning explained further that this room would not meet the criteria of a bedroom if and when a garage is added because it would open directly into a garage.

Mr. Canning reviewed that in the past the Board of Health has granted variances where there was no increase in flow and conditioned that approval upon inspection of the cesspool for structural integrity.

Board members discussed the use of a cesspool converted to be used as a septic tank with an additional soil absorption system. Mr. Canning clarified that it would be considered a converted cesspool which would be failed by definition. Board members questioned whether the mudroom would have heat, to which Mr. Fulcher responded that it would not. Mr. Fulcher was asked whether he plans to build a garage soon, to which he responded that he might after he retires and at that time he would have to upgrade the septic system. He also noted that he has the cesspool pumped regularly every three years.

There were no abutters present.

On a motion by Dr. Schneider and seconded by Dr. Davis, the Board of Health voted in the matter of 26 Nickerson Road and the addition of a mudroom, twelve feet by twelve feet, to function primarily for a washer and dryer. This will be over a crawl space without a basement and as such, has no increase in flow since the house contains a similar washer and dryer at the present time. Since there is no increase in flow, I recommend that we approve the increase in footprint and that the room itself should not be considered a legal need to change the septic system from a converted cesspool. Also, the room itself, with four doors, should not be considered to be a bedroom. This variance is conditioned that the current system be inspected for structural integrity.

Mr. Canning clarified that this is an approval request, not a variance request and that the motion should be changed from variance to approval.

Dr. Schneider amended his motion to change the word “variance” to “approval”. The amendment was seconded by Dr. Davis. The vote was 4-0-0.

Mr. Fulcher noted for the record that Mr. Canning has recently celebrated his 25th Anniversary as a town employee, and, as a taxpayer and co-worker, he noted that Mr. Canning spends a great amount of time working after normal work hours. Ms. McKusick noted that Orleans is exceedingly fortunate to have so many dedicated department heads working for the town.

Agenda Item 5 – Approval Request – 210 Tonset Road

Mr. Patrick Skyne, owner of the property at 210 Tonset Road, was present at this hearing. He described that when he applied for a Building Permit he found that the Building Department has his house listed as two bedrooms and the Assessor’s Field Card lists three bedrooms. He explained that there are three bedrooms with the third bedroom on the second floor where he would like to add a dormer to make the area more livable. He showed photographs of the existing bedroom and a proposed floor plan. (*Exhibit 5-1*) The septic system was upgraded in 2002; however the engineer listed the dwelling as having two bedrooms.

Mr. Canning explained that the septic system has enough capacity for three bedrooms. He described the confusing issues surrounding this property: the Building Permit application in 2001 lists two bedrooms; the Septic Application lists two bedrooms; and the Assessor’s information lists three bedrooms and indicates the finished room on the second floor. There is also a difference in the square footage of the lot: the Assessor’s card lists the lot as 30,656 square feet, and an engineering plan for septic work showed 29,993 square feet. The Health Department now requires plans for septic work because of conflicting room definitions. Mr. Canning suggested that the Board of Health evaluate the existing rooms to determine the use of the second floor room. He also noted that installing a dormer would bring the entire room into height compliance with the Board of Health regulations.

Board members determined that they should accept the upstairs room as a bedroom as it currently exists. It was also noted that Mr. Skyne has been paying taxes on three bedrooms and the Assessor’s card considers the lot to be more than 30,000 square feet.

There were no abutters present.

On a motion by Dr. Schneider and seconded by Dr. Davis, the Board of Health voted in the matter of 210 Tonset Road. The Board of Health recognizes that the home has three bedrooms as has been listed in the

Assessor's records all along. The third bedroom, the one in question being at the upstairs level; photographs which have been provided and show a room which clearly could be a bedroom although it might not meet Code in view of the ceiling being angled. In my motion I would like to suggest that this be recognized as an existing bedroom, that the dormer will bring it into full compliance in terms of the ceiling height, and therefore, that the issue would thereafter become moot. The vote was 4-0-0.

Agenda Item 6 – Determination Request – 89 Namequoit Road

Mr. Forrester Quinn was present to represent William Wilcoxson, owner of the property at 89 Namequoit Road. Mr. Quinn explained that during an inspection at the property he observed a dry block drywell that could be defined as a cesspool because it does not have stone around it. Raw sewage is sent to a septic tank first, then the effluent then goes first to a distribution box and then to two drywells, both in excellent condition.

Mr. Canning read from the Orleans Board of Health Regulations defining cesspools and discussed the definition of raw sewage. In 1973 the Department of Public Health established Article 11 which allowed two types of septic systems: One was a cesspool; the other was a system consisting of a septic tank and a leaching area containing stone. The Health Department obtained a Permit (*Exhibit 6-1*) for this property to install the existing septic tank and two leaching pits surrounded by one foot of stone. There is some discrepancy as to whether the pit was surrounded by stone. Mr. Quinn affirmed that he had excavated beside a tank. Mr. Canning surmised that the excavation did not show evidence of stone around the leach pit.

Mr. Quinn explained that one leach pit was very deep in the ground necessitating that he excavate in order to install a riser to comply with requirement to have the cover within six inches of grade.

There were no abutters present.

Board members discussed whether a previous case set a precedent. Dr. Schneider expressed his understanding that the presence of stone around a leaching pit helps the flow out of the system. Mr. Canning explained that since 1995 the state has reversed its opinion whether or not stone is necessary and has approved septic systems without stone since that time. It was suggested that the Board of Health develop a policy to deal with these issues in the future. It is also necessary to determine whether the leach pits are structurally sound.

Mr. Quinn reiterated that the leach pit is in excellent shape because the flow passes from the septic tank.

Ms. Suraci expressed concern about failing septic systems; however, she feels the Board of Health should be flexible if the system is working properly. Dr. Davis concurred with the previous opinion.

Mr. Canning recommended that the system be inspected for structural integrity, and the homeowner must notify the buyer that there is a septic tank with a leaching facility that may or may not have stone surrounding it. The Board could determine that they do not consider this a cesspool as defined that it is receiving effluent after flowing into a septic tank, and that effluent is not raw sewage. Or, the Board could consider that although the cesspool is receiving raw sewage in the septic effluent, it acts as a leach pit but meets set back requirements and is structurally sound. Mr. Canning noted that the Health Department has failed similar systems for not having the surrounding stone.

On a motion by Dr. Schneider and seconded by Ms. Suraci, the Board of Health voted in the matter of 89 Namequoit Road. The finding is that the current dry block drywell is and always has been distal to a septic tank and has always therefore received overflow from a septic tank and has never functioned as a cesspool receiving raw sewage. The loose block system was originally described as having aggregate around it; however, the most recent inspection did not confirm that. In spite of which, I would move that we approve this as being a leaching pit functioning as a leaching pit, not to be classified therefore as a cesspool. Therefore we do not demand that it be replaced at the time of the change of ownership of this home. Conditions are:

- That the structural integrity be maintained.
- That there is adequate separation of the system from groundwater.

- That the new homeowner who purchases the property be informed of the current situation.

The vote was 4-0-0.

Agenda Item 7 – Determination Request – 10 Chapin Circle

Mr. Forrester Quinn was present to represent Darrell Wong, owner of the property at 10 Chapin Circle.

Mr. Canning explained that this hearing is the same situation as the previous hearing. However he has not been able to find an application to prove whether it was supposed to have stone. He asked Mr. Quinn if the dry block drywell is structurally sound and if it is sufficiently above groundwater.

Mr. Quinn responded that the drywell is definitely above groundwater as evidenced when they augured down. They dug around the drywell and found it to be in very good condition.

There were no abutters present.

Board members discussed that this drywell does not have stone. Mr. Quinn reiterated that both properties are for sale. Mr. Quinn offered that he suggests that realtors have a septic system inspected prior to pricing and listing a house.

On a motion by Dr. Davis and seconded by Dr. Schneider, the Board of Health voted in the matter of 10 Chapin Circle. The finding is that the current leaching pit, which has always been a leaching pit distal to a septic tank, therefore always receiving overflow from the septic tank, has never functioned as a cess-pool. It is constructed of a loose block system without the aggregate around it which is an unusual system for a leaching pit. In view of the history and of the structural integrity that the inspection has revealed, this structure is classified as a leaching pit. I move that we classify it as a leaching pit, and that the Board will not demand that it be replaced. It does have the proper separation from groundwater. The vote was 4-0-0.

Agenda Item 8 – Housing Correction Hearing – 33 Eli Rogers Road

Ms. McKusick outlined the ground rules for this hearing. Mr. Canning distributed to Board members a copy of a letter written by Mr. George Albert on September 30, 2010 to Mr. Robert McAdams requesting that Mr. McAdams clean up the property at 33 Eli Rogers Road. (*Exhibit 8-1*)

Mr. George Albert, owner of the property at 33 Eli Rogers Road was present. Mr. and Mrs. Robert McAdams, former tenants, were also present.

Mr. Canning read from the chronological history of the property, below, and noted that Mr. Albert had requested this hearing.

Date	Form of Action/Communication	Response
July 19, 2010	Robert McAdams, tenant, called the Health Department to complain that he has no hot water and that there is a water leak in the unit at 33 Eli Rogers Road	Scheduled housing inspection for July 20, 2010
July 20, 2010	Housing Inspection	Issued Order to Owner July 22, 2010
July 22, 2010	Issued housing correction order to George Albert, the owner of 33 Eli Rogers Road to remediate several violations at 33 Eli Rogers Rd. Order sent Certified mail RRR	Certified mail received by owner on July 28, 2010
July 22, 2010	Issued a housing correction order to the tenant to remediate violations of Chapter II (housing code) and abate a nuisance. Certified Mail RRR	Certified Mail Received by tenant on August 9, 2010 – all items in compliance on Oct. 4, 10
July 28, 2010	Telephone conversation w/Owner stating that he will not	Advised Mr. Albert of the neces-

	be making any repairs at 33 Eli Rogers Road. He is not being paid any rent and will not make repairs.	sity of the repairs and encouraged him to speak with his counsel.
Date	Form of Action/Communication	Response
July 29, 2010	Health Dept. conducted a re-inspection of the unit with the Building Commissioner and the Fire Captain to assess the smoke/CO units, propane heater, and stairway safety.	Correction orders issued by Building Dept (7-29) and Fire Dept (8-2)
August 12, 2010	Based on the statements by Mr. Albert refusing to make repairs and the lack of action on the repairs, the Health Dept brought the matter to the Board of Health which voted to turn the matter over to Town Counsel.	
August 17, 2010	Health Dept met with Town Counsel regarding the July 22, 2010 housing correction order	Town Counsel communicated with Mr. Albert via telephone on August 17, 2010 expressing that the Board of Health was turning the matter over to Counsel. Town Counsel discussed at length the outstanding condition deemed to endanger (no hot water)
August 25, 2010	Town Counsel wrote to Mr. Albert informing him that he is preparing to initiate legal proceedings to enforce the BOH housing correction order.	
August 27, 2010	Health Department conducted a re-inspection and observed that the hot water heater has been satisfactorily repaired. (repair had been underway since 8-19-20)	Hot water heater repaired.
Sept. 20, 2010	Health Department received a written request from Mr. Albert, for an extension to make the required repairs at 33 Eli Rogers Road.	Hearing Scheduled for October 7, 2010
October 4, 2010	Health Department hand delivered to Mr. & Mrs. McAdams & Mr. Albert notification of a hearing to be held on October 7, 2010	
October 4, 2010	<p>Re-inspection of property.</p> <p>The following items were noted to be in compliance:</p> <ul style="list-style-type: none"> • CO/smoke detectors installed • Globe on light at top of stairway installed • No temporary wiring in use in living room • The water leak in the utility room has been repaired. • Adequate hot water available in the dwelling. <p>The following items were noted to be altered but not in compliance:</p> <ul style="list-style-type: none"> ➤ The tenant removed the handrail and landing of bottom stair and installed a 6"x6" piece of wood from floor to ceiling ➤ The tenant has installed a screen on the kitchen door, this screen is not properly fitted ➤ The electrical heating panel in the utility room has been removed by the tenant. 	

Mr. Canning noted that he had included the original housing order in the Board members' packets for this meeting. He also noted that Mr. Albert has requested an extension of time to complete the balance of the repairs.

Mr. Canning discussed his prioritized list of items to be corrected as shown below:

Tier I Deemed to Endanger

Unit Requirements

- ☒ There are no working carbon monoxide alarms in the dwelling. **(10-4-10 Smoke and CO Detectors installed)**
- ☒ There is no hot water in the dwelling (measured at 72°F); **8-27-10**

Tier II Health & Safety 1

Hallway at top of stairs

- ☒ The cover to the light fixture is missing. **10-4-10**

Interior Stairway

- ☐ Handrail is loose **(10-4-10 Handrail is missing along with bottom stair –removed by tenant)**

Bathroom

- ☐ The bathroom light sconces above the sink are loose/not properly secured.
- ☐ The electrical outlets on the bathroom sconce lights do not work.
- ☐ The toilet is not firmly affixed to the floor, the bolt is fastened with electrical tape, and the toilet rocks from side to side.

Utility Room

- ☐ ~~There is a leak in the lines going to/from the water heater.~~
- ☐ The electrical heating panel has fallen off the wall and is lying on the floor of the room. **(10-4-10 removed by tenant)**

Hallway leading to the bathroom and utility room

- ☐ There is an outlet extending out from the hallway closet. This outlet is not secure.

Exterior

- ☐ The tenant complained that the flood light above the front entry door is inoperable. This unit is not securely fastened to the structure and when he attempts to install a light bulb, the fixture sparks (not observed by Health Department). Per the lettering on the light switch in the living room, the same switch operates the outdoor flood light and an outlet in the living room.

Tier III Health & Safety 2

Bedroom #1 (left of stairway)*

- ☐ Both Windows are not capable of being locked.
- ☐ The window to the rear of the room does not stay open.

Bedroom #2 (right of stairway)*

- ☐ Both windows are not capable of being locked.

Hallway at top of stairs

- ☐ Window is incapable of being locked.

Living Room**

- ☐ There is a propane gas heater in the living room, tenant complains that there is a strong gas odor. **Health Department did not observe odor** at the time of inspection. Tenant expressed concern about the installation of this unit. **(Building Department investigating with owner)**

Tier IV Indoor Air

Bathroom

- ☐ Wall beside bathtub has extensive water damage.
- ☐ The extensive water damage has caused extensive mold/mildew on the backside of the bathroom walls.
- ☐ There is mold in the vanity below the sink.

Utility Room

- ☐ There is extensive water damage to the walls including rotted wallboard and mold/mildew.

Tier V Structural

Bedroom #1 (left of stairway)*

- ☐ The sill is rotting and not secure.
- ☐ The top of the window does not shut completely (screwed in place).
- ☐ The window at the east side of the room has a loose sill.
- ☐ There is a hole in the ceiling/wall joint.

Bedroom #2 (right of stairway)*

- ☐ The window to the west has a cracked pane of glass.
- ☐ There is a large hole/gap in the closet wall (right hand side).

Hallway at top of stairs

- ☐ Ceiling is bowing.

Living Room**

- ☐ Rear side window has a cracked pane.

Kitchen**

- ☐ The cupboard door is spit rendering it difficult to keep clean.
- ☐ The kitchen screen/storm door's self closing mechanism is not working.
- ☐ The large kitchen window at the front of the dwelling is broken and unusable. *(10-4-10 difficult to operate)*

Tier VI Miscellaneous

Interior Stairway

- ☐ Stair runs are pitched forward, tenant claims that this caused him to fall. *(OK by the Bldg. Dept.)*

Living Room**

- ☐ There is a hole in the front window screen.
- ☐ There is a hole in the rear window screen.
- ☒ ~~Temporary wiring is in use in this room.~~ 8-19-10

Kitchen**

- ☐ The kitchen door has no screen. *(10-4-10 miss-fitting screen screwed on by tenant – not tight fitting)*

Unit Requirements

- ☐ Owner's name, address and telephone number are not posted on premises. A notice constructed of durable material, not less than 20" in size, must be posted bearing the name, address, and telephone number of the owner and manager of the dwelling unit.

Exterior

- ☐ In front of and behind the shed to the east of unit 33 is a large pile of trash, furniture, luggage, chairs, plastic bags, television, etc.
- ☐ Behind the old ambulance there are 5 lawn mowers and one snow blower.
- ☐ Health Department records indicate that there is an existing underground fuel oil tank, installed in 1986, that has not been properly tested or removed.

Mr. Albert explained that the tenant (Mr. McAdams) had pulled down a ceiling and rewired using extension cords after which he had the ceiling replaced. The tenant had removed all of the cabinet doors which were

ruined from leaving them outside for two years. Mr. Albert explained that the house had remained vacant for several years until Mr. McAdams brought one of his employees to live in the house as a short-term tenant. Then Mr. Albert agreed to rent to Mr. McAdams at his previous rental amount, but now he owes Mr. Albert \$5000 in rent plus a security deposit. Mr. McAdams had agreed to make certain repairs in the house, but then complained to the Health Department about the gas heater. He refused to pay his rent to a property manager for several months, and now Mr. Albert is frustrated because he cannot pay town taxes and insurance. Mr. Albert reported that Mr. McAdams has a lot of his personal machinery and tools strewn outside the house.

In response to a request from Ms. McKusick, Mr. Albert agreed that the prioritized list is correct but that it is not his responsibility to bring the property into compliance because Mr. McAdams was supposed to have made the repairs listed in the Housing Order. Mr. Albert explained that the missing fire alarms had been wired in but they had since been covered up by a dropped ceiling.

Mr. McAdams stated that he currently lives with his wife in Mr. Albert's house at 33 Eli Rogers Road. Previously he was a tenant in 2004 and 2005 until he left and rented from someone else. He stated that he had good intentions of replacing the dropped ceiling that he had removed because of lint built up by previous tenant. When he moved to a house in Harwich he had agreed to pay rent in cash to Mr. Albert through the end of his lease. Mr. McAdams had hired contractor to replace the dropped ceiling and paint, plaster, and sheetrock under the stairway. He explained that he did not get evicted from his most recent rental house; but that the house was too expensive for him and his wife and they left voluntarily. When Mr. Albert agreed to let Mr. and Mrs. McAdams move back into his house, Mr. McAdams had agreed to pay \$1000 to Ms. Sullivan (property manager) for his rent for 33 Eli Rogers Road. However, he fell and broke his leg and was unable to work. After breaking his leg he used the money to pay people to help him to move to 33 Eli Rogers Road. Mr. McAdams explained that in 2005 he had fallen down the stairs during his prior tenancy at 33 Eli Rogers Road. Mr. McAdams noted that he and his wife had gone four months without hot water and Mr. Albert had refused to repair the hot water heater.

Dr. Schneider inquired if when someone is evicted are they supposed to leave the premises. Ms. McKusick noted that it is not within the prerogative of the Board of Health to discuss housing issues. Ms. Suraci discussed the safety issues in the violations and requested prioritization of the list. The Board of Health is responsible for protecting the public health and safety of the property.

Mr. Albert explained that he had given Mr. McAdams permission to make repairs to the house. However, Mr. Albert's plumber related that someone had turned on the power to the water heater without any water in it, causing the elements to burn out.

Mr. Canning explained that the Conditions Deemed to Endanger at 33 Eli Rogers Road have been resolved. He also read the Health and Safety conditions requiring correction as shown above.

Dr. Davis was excused from the meeting at 3:45 p.m. The Board of Health continued with a quorum of three members.

Mr. Canning continued reading the violations remaining to be corrected as well as the structural issues needing correction.

Ms. McKusick noted that it is very good that the items Deemed to Endanger have been corrected and suggested that the Board of Health continue the order and give thirty days to address the health and safety issues, and ninety days to complete the balance of the violations.

Dr. Schneider discussed that the Board members have heard of some improvement but there is a continuing list of violations. He suggested that the Board of Health could grant extensions or the Board members could declare the house to be deemed uninhabitable. Ms. Suraci noted that the house is barely habitable, and she still considers that the electrical and mold issues are very important. Mr. Canning suggested another option; Town Counsel could pursue an order from the court to have the violations rectified.

Mr. Albert reported that he is very ill and had to borrow money to make the immediate repairs.

Mr. McAdams expressed his appreciation for having a home to live in and he has tried to be a good tenant. He installed a door and reinstalled the fire alarms and noted that he spends most weekends working on the property. Mr. McAdams referred to a letter from Mr. Albert requesting that he clean up the exterior of the property. Ms. McKusick acknowledged that the Board members had received a copy of the letter and that it will be entered into the permanent record. (*Exhibit 8-1 Letter dated 9/30/10 from George Albert to Robert McAdams.*)

Mr. Albert explained that the tenant has been evicted but is still living there. Again, Ms. McKusick informed Mr. Albert that this issue should be referred to his attorney for resolution.

Mr. Canning explained that there are laws protecting tenants from retaliation. He queried that if a tenant is evicted and the house is unoccupied, is the owner still responsible to make the repairs as ordered by the Health Department. If the house is empty, the owner could apply for an extension of time to make the required repairs. Mr. Canning explained further that the Board of Health must consider the health and safety issues if the house is occupied. The Board of Health will review the order and determine if an extension can be given for any or all of the remaining repairs. The Board of Health's decision would be made on owner and tenant comments on the items made during this hearing.

Mr. McAdams discussed their rights as tenants protecting them from eviction after making a complaint to the Health Department. He also noted that they are protected from rent increases, threats, or harassment etc.

Ms. McKusick declared the hearing closed and reviewed the options for the Board of Health. Dr. Schneider again noted some improvement, and there are considerable legal issues to be settled beyond the purview of the Board of Health, and he would be in favor of granting an extension for a reasonable period of time to complete the repairs. Mr. Albert could be represented by counsel at additional hearings while he is away. Ms. Suraci opined that the Board of Health should grant a lump extension because some of the repairs are simple fixes. She suggested that 90 days would be reasonable to get most repairs completed. The Board of Health is responsible to be aware of these issues and is allowing 90 days for them to be corrected. Ms. McKusick stated that safety issues, such as the means of egress and locks for windows, should be addressed within 30 days, and then the structural violations should be corrected within 90 days.

On a motion by Dr. Schneider and seconded by Ms. Suraci, the Board of Health voted in the matter of 33 Eli Rogers Road to re-contact Attorney Michael Ford and inform him of the public hearing today where both parties had a chance to speak and which lasted over an hour. The remaining items to be repaired were discussed and prioritized and the Board of Health recommends that the following items (as delineated by the Health Agent) should show a good faith effort to be repaired within 30 days and the others within 90 days. The vote was 3-0-0.

Agenda Item 9 – Approve Minutes

The minutes of the Board of Health meeting held on September 16, 2010 had previously been distributed to Board members for review and approval. There were only two members present at this meeting to approve the minutes, therefore they were held for a later time.

Agenda Item 11 – Review Correspondence / Old and New Business

Correspondence

- 11 – 1 A letter from Mr. Tim Brady of East Cape Engineering dated September 28, 2010 regarding the building recently constructed at 5 Nell's Way had previously been distributed to Board members for review and discussion. Mr. Brady's letter requested that a change in use and a waiver from the need for inspection of the septic system be granted by the Board of Health. The policy of the Health Department and Board of Health that a septic system must be inspected on change of use of property. Basically, this system has not been used because the building has not been permanently occupied as a business since it was built.

On a motion by Dr. Schneider and seconded by Ms. Suraci, the Board of Health voted in the

matter of 5 Nell's Way to grant a waiver to the requirement to have the septic system inspected because of the change in use and the Certificate of Compliance is more than one year old. The vote was 3-0-0.

- 11 – 2 A letter from Mr. Tim Brady of East Cape Engineering dated September 20, 2010 regarding System 3 at the Cove Condominium at 13 South Orleans Road had previously been distributed to Board members for review and discussion. Mr. Brady's letter requested that a reduction in the required quarterly inspections of System 3 be permitted by the Board of Health. The condominium currently has cesspools and they have been granted extensions while they wait for wastewater treatment (sewers). Mr. Canning suggested that the Board of Health extend the compliance date for two years and reduce the testing of System 3 to once per year. Discussed how long to keep extending. Annual inspection and review in 2 years.

On a motion by Dr. Schneider and seconded by Ms. Suraci, the Board of Health voted in the matter of the Cove Condominium at 13 South Orleans Road to extend the compliance date for two years and reduce the testing of System 3 to once per year. The vote was 3-0-0.

Board members discussed how long they could continue extending compliance orders while waiting for Town sewers to be installed.

- 11 – 3 The Orleans, Brewster, Eastham Groundwater Protection District Board of Managers Meeting minutes of August 9, 2010 had previously been distributed to Board members for review and discussion.
- 11 – 4 A listing of state, federal, and local regulations regarding Vending Machines, Free Samples and Self-Service Clarifying "Adult Only" had previously been distributed to Board members for review and discussion.
- 11 – 5 A fact sheet from the Massachusetts Department of Public Health concerning the FDA Regulation of Tobacco Products, effective June 22, 2010 had previously been distributed to Board members for review and discussion.
- 11 – 6 A memo from Sarah Eaton regarding Microphone Use during meetings had previously been distributed to Board members for review and discussion.
- 11 – 7 A letter from Schofield Brothers dated September 23, 2010 reporting the performance of the septic system serving the Orleans Yacht Club had previously been distributed to Board members for review and discussion.
- 11 – 8 A letter from the Orleans Health Department dated September 20, 2010 to Trudy Nordhausen, owner of the property at 18 Industry Way, Unit B, reporting the action taken by the Board of Health at its meeting held on September 16, 2010 had previously been distributed to Board members for review and discussion. This is a follow-up letter from the Board of Health hearing. The Health Department will inspect again around October 18, 2010.
- 11 – 9 A letter from Gretel Norgeot, manager of the Orleans Farmers' Market, dated October 4, 2010 had previously been distributed to Board members for review and discussion. One of the vendors wants to serve hot, mulled cider. She would purchase pasteurized cider, heat and serve it at the Farmers' Market. This vendor already brings bread, honey, and water. Mr. Canning cautioned that this is another step in the direction of food service at the Farmers' Market. They are getting further away from a Farmers' Market to a food establishment and are competing with other local establishments. The Board of Health has issued a food service permit for sampling in the past and they are now asking for hot products. The Farmers' Market does not have the physical facilities available required by the Food Code. Potentially hazardous food is being served. It is expected that they will bring the cider, already warmed, in hot carafes. Ms. McKusick suggested that the Board of Health should revisit this issue again in the spring with input from other nearby food service establishments. Mr.

Canning discussed the issues about cider in terms of being a potentially hazardous food.

On a motion by Ms. McKusick and seconded by Dr. Schneider, the Board of Health voted to approve the request to serve hot cider as outlined in the letter of October 4, 2010 for the remainder of this year. The vote was 3-0-0.

Agenda Item 10 – Health Agent’s Report

Mr. Canning reported on the following:

Licenses and Permits

Residential Kitchen License – Sea Turtle Farms

Michelle Koch of 18 Chickadee Lane has applied for a Residential Kitchen License with a variance from 105 CMR 590.009(D), for the required three (3)-bay sink. Ms. Koch had taken the Serve Safe exam on October 6, 2010 and the Health Department received a fax that day indicating that Ms. Koch had successfully passed the training and exam. Ms. Koch intends to prepare pies, turnovers, tarts, cookies, biscotti, and cupcakes at the Farmers’ Market.

On a motion by Dr. Schneider and seconded by Ms. Suraci, the Board of Health voted to grant a Residential Kitchen License to Michelle Koch of 18 Chickadee Lane; and a variance to sell pies, turnovers, tarts, cookies, biscotti, and cupcakes at the Farmers’ Market. The vote was 3-0-0.

Septage Collection and Transportation License – F.L. Quinn

F.L. Quinn has previously held a Septage Collection and Transportation License in Orleans and has demonstrated knowledge of Title 5 as well as the Board of Health Regulations.

On a motion by Dr. Schneider and seconded by Ms. Suraci, the Board of Health voted to grant a Septage Collection and Transportation License to F.L. Quinn. The vote was 3-0-0.

System Inspection – 24 The Lane

David Quinn, a DEP-approved System Inspector, has requested a waiver from the Board of Health from its requirement that the cover to the outlet end of a septic tank be raised to within six (6”) inches of final grade. The outlet to the septic tank, which is eighteen (18”) below grade, has been exposed and inspected; however it is located under a brick patio and has a roof drainage pipe running adjacent to the cover. Because of the proximity of the of the drain pipe the cover cannot, without difficulty, be raised to within six (6”) inches of finished grade as required by the Board of Health Subsurface Sewage Disposal Regulations. Mr. Quinn is seeking a waiver to this requirement.

On a motion by Dr. Schneider and seconded by Ms. Suraci, the Board of Health voted in the matter of 24 The Lane to grant a waiver to the requirement that the cover to the outlet end of the septic tank be raised to within six (6”) inches of final grade. The vote was 3-0-0.

Dr. Davis returned to the meeting at 4:29 p.m.

Agenda Item 9 – Approve Minutes

The minutes of the Board of Health meeting held on September 16, 2010 had previously been distributed to Board members for review and approval. There were only two members present at this meeting to approve the minutes, therefore they were held for a later time.

On a motion by Ms. Suraci and seconded by Dr. Davis, the Board of Health voted that the minutes of the Board of Health meeting of September 16, 2010 be approved as presented. The vote was 3-0-1 with Dr. Schneider abstaining.

New Business


Ms. McKusick discussed that the Nutrient Management Regulation was written to have it in place before the MDEP wrote its regulation to address low-net flow and to allow a town to apply for zero interest loans for wastewater management. The new regulation is expected before the end of the year. The Cape Cod Commission has agreed to review Orleans' regulation to see if they mesh. Dr. Davis agreed to meet with Ms. McKusick at the Commission office to review the two documents. It was noted that any changes would most likely be minor.

There was no further business to discuss during this meeting.

Agenda Item 12 – Adjournment

On a motion by Dr. Schneider and seconded by Ms. Suraci, the Board of Health voted to adjourn this meeting of the Board of Health at 4:34 p.m. The vote was 4-0-0.

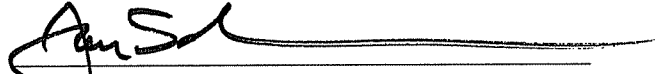
Respectfully submitted,

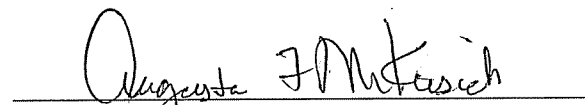

Lynda M. Burwell, Board Secretary


ORLEANS BOARD OF HEALTH

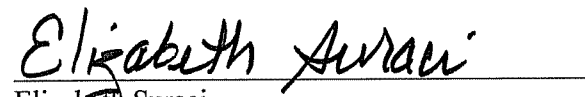
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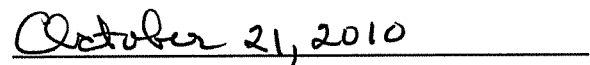
Attorney Job Taylor, III; Chairman


Jan Schneider, M.D.


Augusta F. McKusick, Vice Chairman


Robin K. Davis, Ph.D.


Elizabeth Suraci


Date Approved/Accepted

**DOCUMENTS PROVIDED FOR THE October 7, 2010
MEETING OF THE ORLEANS BOARD OF HEALTH**

Agenda Item 2 – 41 Willie Attwood Road

- 2 – 1 – Letter and Variance Application Form submitted by Coastal Engineering Company, Inc.
- 2 – 2 – Sewage Disposal System Plan to Replace Cesspools dated September 16, 2010
- 2 – 3 – OHD Letter dated June 22, 2009 Re: 41 Willie Attwood Road Variance Hearing
- 2 – 4 – Excerpt of June 4, 2009 BOH Meeting Minutes

Agenda Item 3 – 246 Tonset Road

- 3 – 1 – Letter from by J.C. Ellis Design Company, Inc. dated October 1, 2010
- 3 – 2 – Septic System Upgrade Plan dated Revised September 29, 2010
- 3 – 3 – Assessor's Field Card
- Exhibit 3 – 1 – Photos of the two upstairs bedrooms and the rear of the house showing a dormer.

Agenda Item 4 – 26 Nickerson Road

- 4 – 1 – Paul Fulcher letter dated September 30, 2010 requesting a BOH Hearing
- 4 – 2 – Excerpt of OBOH Subsurface Sewage Disposal Regulations
- Exhibit 4 – 1 – House plans prepared by Design & Drafting Services of Cape Cod, no date.

Agenda Item 5 – 210 Tonset Road

- 5 – 1 – Patrick Skayne letter Re: Hearing Request for bedroom determination dated October 4, 2010
- 5 – 2 – Assessor's Field Card
- 5 – 3 – Disposal System Construction Permit and Certificate of Compliance dated June 13, 2001
- 5 – 4 – Building Permit Application dated May 20, 2002
- 5 – 5 – There was no Item 5 – 5.
- 5 – 6 – Proposed Floor Plan, no date
- 5 – 7 – Excerpt from OBOH Nutrient Management Regulations
- Exhibit 5 – 1 – Sketch and photos from Patrick Skayne

Agenda Item 6 – 89 Namequoit Road

- 6 – 1 – Hearing Request submitted by F. L. Quinn dated September 17, 2010
- 6 – 2 – Excerpt of OBOH Subsurface Sewage Disposal Regulations
- 6 – 3 – Excerpt from November 5, 2009 OBOH Meeting Minutes
- Exhibit 6 – 1 – Application for Disposal Works Construction Permit dated January 29, 1973

Agenda Item 7 – 10 Chapin Circle

- 7 – 1 – Hearing Request submitted by F. L. Quinn dated September 17, 2010
- 7 – 2 – Excerpt of OBOH Subsurface Sewage Disposal Regulations

Agenda Item 8 – 33 Eli Rogers Road

- 8 – 1 – George Albert letter dated September 10, 2010
- 8 – 2 – OHD Hearing Notice to McAdams dated October 4, 2010
- 8 – 3 – OHD Hearing Notice to Albert dated October 4, 2010 (hand delivered)
- 8 – 4 – OHD Housing Order to Albert dated July 22, 2010
- 8 – 5 – Excerpt of OBOH August 12, 2010 Meeting Minutes
- 8 – 6 – Albert Eviction Letter to McAdams dated September 6, 2010
- 8 – 7 – Orleans Building Department Order dated July 29, 2010
- 8 – 8 – Orleans Fire Department Order dated August 2, 2010
- 8 – 9 – Orleans Fire Department Letter Re: Underground Oil Storage Tank dated July 31, 2007
- 8 – 9 – BCDH&E Letter to Albert dated May 18, 2007 Re: Underground Oil Storage Tank
- Exhibit 8 – 1 – Albert Letter to McAdams dated September 30, 2010

Agenda Item 9 – Approve Minutes

- 9 – 1 – OBOH September 16, 2010 Meeting Minutes

Agenda Item 11 – Review Correspondence / Old – New Business

- 11 – 1 – Letter from East Cape Engineering, Inc. Re: Cove Condominium, 13 S. Orleans Road dated September 20, 2010
- 11 – 2 – Letter from East Cape Engineering, Inc. Re: 5 Nells Way dated September 28, 2010
- 11 – 3 – Orleans, Brewster, Eastham Groundwater Protection District Board of Managers Meeting Minutes of August 9, 2010
- 11 – 4 – Adult Only Regulations for Vending Machines, Samples, etc.
- 11 – 5 – FDA Regulations of Tobacco Products

**DOCUMENTS PROVIDED FOR THE October 7, 2010
MEETING OF THE ORLEANS BOARD OF HEALTH**

Page 2

- 11 – 6 – Sarah Eaton Memo Re: Microphone Use
- 11 – 7 – Schofield Brothers Letter to MDEP Re: 39 Cove Road, Orleans Yacht Club dated September 23, 2010
- 11 – 8 – OHD Letter to Nordhausen Re: 18 Industry Way, Unit B dated September 20, 2010
- 11 – 9 – Orleans Farmers' Market Letter to OBOH dated October 4, 2010