

**TOWN OF ORLEANS – BOARD OF HEALTH 11 JAN -6 PM 3: 53**

**MINUTES OF MEETING**

**December 16, 2010**

The Board of Health convened its meeting at 2:03 p.m. on Thursday, December 16, 2010 in the Skaket Meeting Room of the Orleans Town Hall.

Present: Chairman, Job Taylor, III, 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

**Agenda Item 1 – Public or Press**

There was no one present for Public or Press.

**Agenda Item 2 – Variance Request – 20 Cullum Road**

Mr. David Lyttle of Ryder & Wilcox represented Nancy and Donald Hinman, owners of the property at 20 Cullum Road. Mr. David Ohnemus was also present as contractor for the Hinman's. Mr. Lyttle explained the request for a variance from the Orleans Board of Health Regulations, Section IV (G) (4), to allow the addition of a screened porch which will increase the square footage of the three-bedroom dwelling which is located on a half acre lot. Although the screened porch increases square footage of the dwelling, it will not increase the flow of wastewater to the existing cesspool. However, the presence of a cesspool for the property meets the criteria of a failed septic system and requires an upgrade. The cesspool has been inspected and found to be structurally sound. The Hinman's are in the process of taking ownership of the property and would like to add a screened porch, but cannot afford to replace the septic system at this time.

Attorney Taylor acknowledged that it appears that replacing the cesspool is a hardship, and asked if the owner would be willing to have the cesspool inspected annually and a new septic system installed within five years. Mr. Ohnemus responded that the owner would agree to have the cesspool inspected annually and they have already spoken with Mr. Quinn about replacing it. Mr. Ohnemus further explained that the Hinman's were required to buy-out siblings in order to take ownership of the property.

Mr. Canning discussed that this is a request to add square footage to a dwelling served by a cesspool. Orleans Board of Health Regulations state that any system shall be considered to have failed when any of its components consists of a privy, cesspool, or converted cesspool which has been identified when inspected for sale of a property, a change in use, or for a building permit resulting in an increase in flow, an increase in square footage, or change in footprint. The regulation also states that for the expansion or change of use of a facility, and the inspection indicates that one or more of the components is not adequate for the use being placed upon it, all components must be brought up to the provisions of Title 5 and the Orleans Board of Health Regulations.

Mr. Canning further explained that Board members would be reviewing this as a variance request considering that the same degree of environmental protection must be met and that failure to grant a variance would cause a hardship. He also reported that F. L. Quinn had inspected the cesspool and it appears to be in good condition and is well above groundwater.

Board members discussed that the screened porch would be built on sonotubes and elevated. They also discussed that the proponent owns an abutting lot and whether or not they intend to join the two lots into one. Board members also discussed the size of the porch and existing house.

There were no abutters present.

**On a motion by Ms. McKusick and seconded by Dr. Schneider, the Board of Health voted in the matter of 20 Cullum Road, owners Hinman. The owners are applying for a variance to put a screened-in back porch which would increase the footprint and they are applying for a variance under environmental protection and hardship. Findings are:**

- 1. Plan indicates there is room for placement of a septic system.**
- 2. The property is now served by a cesspool which will need replacing.**
- 3. This will not be considered a bedroom and increase the flow.**

**I move we grant this variance with the following conditions:**

- 1. That it be inspected annually.**
- 2. The cesspool must be replaced with a new septic system within five years, by 2016.**
- 3. Hardship is because the children are enrolled in college and within that interim they should have been graduated and the hardship should have eased.**

**I move approval of this.**

There was further discussion regarding the need for a deed restriction and Mr. Canning explained that any construction requiring a Building Permit would be reviewed by the Health Department.

**The vote was 5-0-0.**

### **Agenda Item 3 – Bedroom Determination – 32 Freeman Lane**

Mr. David Lyttle of Ryder & Wilcox represented Mary and Paul Sandman, owners of the property at 32 Freeman Lane. Mr. Peter Polhemus was also present. Mr. Lyttle distributed photographs (*Exhibit 3-1*) of the alcove in question. Mr. Polhemus explained that the previous owner had constructed the alcove, but not according to the plans on file with the Town. The plans indicated a six (6') foot opening between the breakfast room and the alcove, but in reality the opening is just four (4') feet eleven (11") inches. Mr. Polhemus explained further that the owner would like to construct an additional bedroom in the barn on the property. However, when confirming the number of bedrooms in the main house, it was determined that the alcove meets the criteria of a bedroom because of the privacy afforded by the lack of a six-foot opening. Because the new septic system will be designed for six bedrooms, the proponent requests that the alcove be determined not to be a bedroom. The request is for a bedroom determination in order to add a bedroom in the loft of the barn. If the alcove is considered a bedroom, there would be five bedrooms in the house; therefore, the proponent asked for relief from the alcove meeting the criteria of a bedroom. It was suggested that the owner could open the wall to six feet, but it was pointed out that it would be an unnecessary expense.

Mr. Canning discussed that this hearing is for a bedroom determination. Proponent wants to renovate the existing barn on the site to have two bedrooms. The house currently has four bedrooms plus the alcove which was supposed to have had a six foot opening. The proponent has requested that the Board of Health determine that the house has only four bedrooms, therefore allowing two bedrooms in the barn. The alcove is about 108 square feet and is very open to the breakfast room and further to the kitchen.

Board members discussed that the plan in the packet shows a formal bedroom labeled "den" and that there is a living room that is not shown on the plan copy in the packet. Mr. Lyttle explained that the

addition shown on the plan is not under discussion; these plans accompanied the application in 2000 to construct the alcove. Mr. Canning affirmed that the room shown on the plan dated December 16, 2010, as Item 3 – 3 of the packet, as “Den”, does meet the criteria as a bedroom.

Mr. Lyttle reiterated that Ryder & Wilcox is designing a new septic system for the property to have capacity for the waste from all six bedrooms.

It was noted that by changing the opening to six feet it would then be centered on the wall. In addition, by brining that room into compliance with the existing records, there would be no question about the number of bedrooms.

Mr. Polhemus questioned the number of bedrooms in the house, and noted that it would be an unnecessary expense for the owners to have to increase the opening to the alcove by thirteen (13”) inches.

**On a motion by Attorney Taylor and seconded by Dr. Schneider, the Board of Health voted with respect to the request for a bedroom determination at 32 Freeman Lane, the owner being Sandman. I would move that there be considered four bedrooms in the main building which would permit two bedrooms in the outlying barn; and that the alcove be considered to be an alcove without the modification of thirteen inches. This vote is conditioned that a deed restriction be recorded at the Registry of Deeds. The vote was 5-0-0.**

#### **Agenda Item 4 – Plan Review / Approval – 17 Surfboat Lane**

Attorney William Riley was present to represent Dushyanthi Mahendran, owner of the property at 17 Surfboat Lane.

Mr. Canning explained that this is a plan review for approval by the Board of Health. The applicant had applied for a septic permit prior to the June 30, 2009 deadline for the Nutrient Management Regulations. The septic system applied for is an addition to the current system which would have capacity for 660 gallons per day, allowing six bedrooms at that location. He explained that the proposed building plan under discussion is for the basement of the house as it now exists; resulting in no increase in footprint. Mr. Canning referred to Packet Item 4-5, Existing Foundation Plan which shows the stairway down into a game room with two proposed bedrooms, one on either side of the game room. Mr. Canning noted that new egress windows would be installed in the bedrooms and game room, and Attorney Riley explained that he had discussed that issue with J. C. Donald to determine the type of window necessary to meet both the Housing Code and the Building Code. Mr. Canning continued that the Existing First Floor Plan shows three bedrooms and two bathrooms; and the Existing Second Floor Plan shows a bedroom, living room, dining room, kitchen, and family room. He emphasized that the opening to the family room must be at least six feet wide. Attorney Riley reported that he had spoken to Mr. Donald regarding that opening and Mr. Donald explained that the stairway is open and that the opening to the family room is currently six feet wide.

Mr. Canning reiterated that the issue for the Board of Health is a plan review. The property is limited to six bedrooms per the proposed septic system plan.

Board members discussed that the property is intended for commercial rental during the season. Attorney Riley acknowledged that the owner would use both properties themselves depending on when they are available. It was noted that the proposed septic system plan was completed and submitted on the last day before the Nutrient Management Regulations were in effect, and the Board has felt exploited in the past by this owner. The Health Department has expended more than 200 hours dealing with the issue of bringing the house on Ori Lane into compliance, and that house continues to be badly abused. There has been a flagrant violation of the intent of the Board and this owner has been deceitful in the past. It was observed that this house is located on less than one-half an acre in a very fragile location.

Mr. Canning reiterated that the Health Department has issued the septic permit for six bedrooms under Title 5 and the Board of Health Regulations because it came in before the Nutrient Management Regulation was in effect. The Town policy is that the Health Department signs off on all Building Permits after reviewing septic system issues. At the time the septic permit was issued there weren't any floor plans included for the additional bedrooms and gameroom.

For the record, Dr. Schneider explained that in his nine years on the Board of Health, there are only two names of proponents that stay in his memory; and one of them is Mahendran! Although he has never met them, they are unique as petitioners to the Board of Health.

**On a motion by Ms. McKusick, the Board of Health voted in the matter of 17 Surfboat Lane to go on record as not approving of the plans that have been put forward today to have six bedrooms on less than a half acre of land. The Board of Health should immediately explore options of how they can rescind the permit that was issued hours before the deadline. Findings are that this was issued at the time when there were on-going, protracted relations with the Board of Health that had been completely unsatisfactory; and flagrant violations and concerns of the neighborhood, and we do not want to go there again. Attorney Taylor modified the motion that the Board requests that the Health Agent advise the Building Department of the Board of Health's view and opinion. The motion and modification were seconded by Dr. Schneider. The vote was 5-0-0.**

Ms. McKusick clarified that her suggestion that the Board explore options to rescind the septic permit was a suggestion that Mr. Canning discuss this issue with Town Counsel. Mr. Canning recapped his understanding that the Health Department should deny the Building Permit and discuss how to rescind the Sewage Disposal Permit with Town Counsel.

#### **Agenda Item 5 – Plan Review / Approval – 86B Route 6A**

Mr. Michael Smith was present as owner of the property at 86B Route 6A.

Mr. Canning reported that in 1998 the previous owner installed a new septic system to repair a failed septic system. In 2006 Mr. Smith requested permission to add a closet and a bathroom by constructing an addition in the main part of the building. At that time the Board of Health determined that the requested addition did not infringe on the location of a replacement septic system if needed and it was determined that the dwelling had two bedrooms. However, with the current request and review of the records, it was determined that the existing plans indicate a three-bedroom dwelling; therefore, it was before the Board of Health to clarify the discrepancies in the record.

**On a motion by Dr. Schneider and seconded by Ms. McKusick, the Board of Health voted in the matter of 86B Route 6A. This came before the Board because there is some confusion about some disparity between previous plans which showed three bedrooms, but the written record indicates that there were only two. In fact, review of the plans indicates that there are three bedrooms and there have always been three bedrooms. The letter from the Health Department dated November 28, 2006 was in error and it was three bedrooms. I move that this Board agrees that this house always has had three bedrooms, and therefore does not require any action to identify it as a three-bedroom dwelling. The vote was 5-0-0.**

#### **Agenda Item 6 – Variance Request – “Be The Change”**

Mr. Ben Miller was present as agent for the human rights group “Be The Change”. They are planning an event (Food for Recovery) to be held at the Odd Fellows Hall on December 20, 2010 from 3:00 p.m. to 9:00 p.m. Mr. Miller requested a Temporary Food Permit and a variance for the food to be served such as lasagna, Sheppard's pie, German potato salad, corn bread, and green salad. He explained that this project is part of his senior project at Cape Cod Tech to benefit the community. Mr. Miller further

explained that the soup kitchen is mainly focused on recovering addicts and alcoholics, especially during the cold winter season. The "Be The Change" group is funding the expense of this project.

Mr. Canning discussed that all food will be prepared at the Tech School in Harwich and will be transported hot to the Odd Fellows Hall in Orleans. A Certified Food Protection Manager (Mr. Domenic Bachand) will be present at the kitchen. Variance is for the menu to be served.

**On a motion by Attorney Taylor and seconded by Dr. Schneider, the Board of Health voted in the matter of "Be The Change" to grant the variance as required and as asked for. The date can be amended by Health Department if necessary. The vote was 5-0-0.**

### **Agenda Item 7 – Approve Minutes**

The minutes of the Board of Health meeting held on November 18, 2010 had previously been distributed to Board members for review and approval.

Dr. Schneider commented that on page 3, first paragraph, the word bathroom should be changed to bedroom.

**On a motion by Attorney Taylor and seconded by Dr. Schneider, the Board of Health voted to approve the minutes of November 18, 2010 as corrected. The vote was 5-0-0.** The correction was made by the Board Secretary.

The minutes of the Board of Health meeting held on December 2, 2010 had previously been distributed to Board members for review and approval.

**On a motion by Dr. Schneider and seconded by Ms. McKusick, the Board of Health voted to approve the minutes of December 2, 2010 as presented. The vote was 3-0-2.** Ms. Suraci and Dr. Davis were excused from the meeting, therefore abstained from the vote.

### **Agenda Item 8 – Health Agent's Report**

Mr. Canning reported on the following:

#### **Solid Waste Issues**

Mr. Canning confirmed the meeting with the Board of Selectmen for Wednesday January 5, 2011 at 6:30 p.m. The purpose of this meeting is to follow up on Solid Waste Planning Issues, including:

- Update on Town of Bourne's Regional Solid Waste Forum and possible options involving long term access to their municipal landfill
- Other options to consider with the SEMASS contract expiring in 2015 (i.e., pay as you throw; stabilization fund to offset future solid waste costs)
- Discuss staff recommendations for any sticker fee increases for FY12

#### **Housing**

##### **33 Eli Rogers Road**

At the last meeting Mr. Canning reported to the Board that the Health Department had conducted housing re-inspections at 33 Eli Rogers Road. During these re-inspections it was discovered that there was no hot water, and the next day, no potable water and several items which were to be completed by November 6, 2010 had not be completed. At that meeting the Board requested Mr. Canning pursue the matter, especially the items deemed to endanger, with Town Counsel.

Mr. Canning reported a synopsis of the events since the Board of Health meeting on December 2, 2010 and the action taken to date as follows:

- December 2, 2010 – Mr. Albert called the Health Department to report that his well driller and plumber were going to the dwelling within the next 24 hours to address the lack of water and hot water tank issue.
- December 3, 2010 – Health Department conducted re-inspections and confirmed that there was an adequate supply of water and hot water.
- December 6, 2010 – A follow-up letter was sent to the owner regarding the outstanding issues.
- December 13, 2010 – Tim Aselton, grounds keeper for the owner, came to the Health Department to get a list of the items that had to be repaired by January 5, 2010 as preparation for making the necessary repairs. At that time Mr. Canning discussed with him the outstanding items that were due on November 6, 2010. They discussed the Board of Health meeting of December 2, 2010 where the Board asked Town Counsel to review the status of the “new” conditions deemed to endanger as well as the outstanding items from November 6, 2010. Mr. Asleton stated that he would discuss the matter with Mr. Albert and would make the necessary repairs. Mr. Asleton discussed the possibility of moving the tenants into the abutting dwelling unit if Mr. Albert agreed.
- December 14, 2010 – Mr. Canning met with Town Counsel and reviewed the happenings since December 1, 2010 including the conversations with Mr. Asleton. Mr. Canning will evaluate progress through the week.

Mr. Canning reported that Mr. Asleton took immediate action on the conditions deemed to endanger, and the Health Department will continue to monitor the remaining issues.

## **18 Industry Way**

The Health Department received a call from Marcel Costantino requesting an inspection for Friday, December 17<sup>th</sup>. According to Mr. Costantino, all items contained in the Board of Health orders had been completed. He anticipates renting the unit by the first of the year. A re-inspection has been scheduled for December 17, 2010.

## **Health Department Housing Complaints**

Mr. Canning discussed how long it takes to resolve housing issues and how much more it would burden the Health Department if a seasonal rental program is instituted. He explained that each complaint averages approximately eight hours of time for resolution. It has taken approximately 100 hours for each of the two previously outlined housing issues.

## **Agenda Item 9 – Review Correspondence / Old and New Business Correspondence**

Attorney Taylor suggested that during May through September that the Board of Health meet once each month instead of two meetings. It was noted that those five months fall during the heaviest building time during a year. Mr. Canning explained that in the past he has consulted with the chairman on any situations needing immediate action. Attorney Taylor also noted that the chairman could always call a special meeting to consider issues requiring full Board of Health action. Attorney Taylor listed the following dates for summer meetings: May 5, 2011, June 2, 2011, July 7, 2011, August 4, 2011, and September 1, 2011, all meetings to be held at 2:00 p.m.

**On a motion by Ms. McKusick and seconded by Dr. Schneider, the Board of Health voted to modify our schedule as previously read by the Chairman, with the proviso that a special meeting can be called at any time and that items that need attention can be dealt with by the Chairman and Health Agent. The vote was 5-0-0.**

9 – 1 – A listing of the Board of Health Permits proposed for 2011 was previously distributed to Board members for review and discussion.

**On a motion by Dr. Schneider and seconded by Attorney Taylor, the Board of Health granted approval of the proposed licenses listed as the “Board of Health Permits of 2011” conditioned upon receipt of a completed application prior to releasing the license. The vote was 5-0-0.**

9 – 2 – A letter from Coastal Engineering Company, Inc. regarding the Sewage Disposal System Remediation at 5 Colony Way was previously distributed to Board members for review and discussion. Mr. Canning noted that this letter is an update on the septic system at Hot Chocolate Sparrow, and that the Aero-Stream process is providing considerable relief.

9 – 3 – A letter from Barbara D. Ragsdale, owner of the property at 7 Prenc Lane was previously distributed to Board members for review and discussion. Mr. Canning explained that there has been an overflow of sewage at this property. Because the dwelling is currently vacant, the proponent was requesting an extension on the order to repair the septic system because of impending surgery. However, they hope to rent the apartment soon to recoup some of the expenses of repairing the unit after the last tenant. She has made arrangements to have the cesspool pumped within four hours if needed. Mr. Canning expressed concern that the owner would wait until there is further overflow or backup into the unit before calling for the cesspool to be pumped.

**On a motion by Attorney Taylor and seconded by Dr. Schneider, the Board of Health voted to request the owner to appear before the Board at the next meeting on January 6, 2011. The vote was 5-0-0.**

9 – 4 – A letter and Inspection Report from GHD, Inc. regarding the semi-annual inspection of the Orleans Transfer Station was previously distributed to Board members for review and discussion. Mr. Canning noted that everything was in good order.

9 – 5 – A letter and Inspection Report from GHD, Inc. regarding the semi-annual groundwater monitoring at the Orleans Landfill was previously distributed to Board members for review and discussion. Mr. Canning reported that there were no substantial changes from monitoring results in the past.

*Exhibit 9 – 1* A letter dated November 17, 2010 from Mass. Department of Environmental Protection regarding two changes in the Mass. Solid Waste Law (GL c. 111, §150A). The attached Draft Mass-DEP Guidance to Boards of Health: New Statutory Provisions Regarding Site Assignment dated November 17, 2010, and the attached Draft MassDEP Guidance to Boards of Health: New Statutory Provisions Regarding Transfer Stations dated November 17, 2010.

Mr. Canning explained that State regulations have changed regarding site assignments. Boards of Health are now solely responsible for site assignments and permitting of solid waste facilities of less than 50 tons per day. This Board will be responsible for the Town of Orleans solid waste facility and possibly that of Daniels C&D facility. The Board will need to develop criteria for licensure. Mark Budnick will be reporting to the Board in January and will discuss this issue as well. Any waivers must be granted by the State on small solid waste facilities of less than 50 tons per day.

Dr. Schneider noted that once again, the Health Department is being forced to take on more responsibility with no increase in staff or funding. Ms. Christie noted that this is another unfunded mandate by the State.

Mr. Canning will draft the year-end report of the Board of Health.

There was no further business to discuss during this meeting.

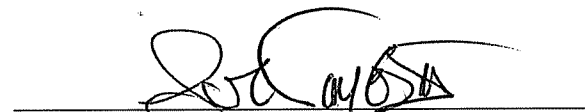
**Agenda Item 8 – Adjournment**


On a motion by Ms. McKusick and seconded by Dr. Schneider, the Board of Health voted to adjourn this meeting of the Board of Health at 3:23 p.m. The vote was 5-0-0.

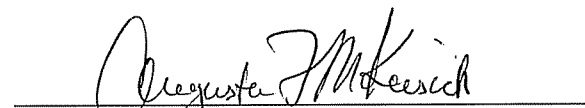
Respectfully submitted,


  
Lynda M. Burwell, Board Secretary

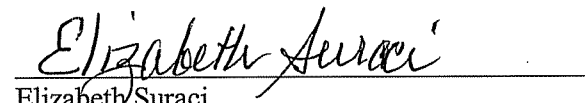
**ORLEANS BOARD OF HEALTH**

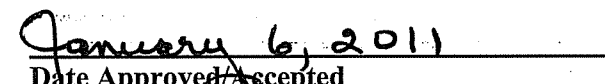
  
Attorney Job Taylor, III; Chairman

  
Jan Schneider, M.D.

  
Augusta F. McKusick, Vice Chairman

  
Robin K. Davis, Ph.D.

  
Elizabeth Suraci

  
Date Approved/Accepted



**DOCUMENTS PROVIDED FOR THE December 16, 2010  
MEETING OF THE ORLEANS BOARD OF HEALTH**

**Agenda Item 2 – 20 Cullum Road**

- 2 – 1 – Letter and Variance Application submitted by Ryder & Wilcox dated December 6, 2010
- 2 – 2 – Title 5 Official Inspection Form submitted by Forrester L. Quinn inspection dated November 29, 2010
- 2 – 3 – Site Sketch prepared by Ryder & Wilcox dated December 6, 2010
- 2 – 4 – Excerpt of OBOH Subsurface Sewage Disposal Regulations, Sections III, Definitions, IV. General Requirements, and VI. Variance/Local Upgrade Approval.
- 2 – 5 – Excerpts from Title 5 Official Inspection Form submitted by Forrester L. Quinn inspection dated November 29, 2010
- 2 – 6 – Map showing location of 20 Cullum Road, Orleans.

**Agenda Item 3 – 32 Freeman Lane**

- 3 – 1 – Request for Meeting/Hearing submitted by Ryder & Wilcox dated December 7, 2010
- 3 – 2 – Building Permit Application dated August 21, 2000.
- 3 – 3 – Revised First Floor Plan, no date or identification.

*Exhibit 3 – 1* – Photographs of the alcove in question from Ryder & Wilcox

**Agenda Item 4 – 17 Surfboat Lane**

- 4 – 1 – Letter dated December 9, 2010 from Attorney William F. Riley representing D. Mahendran, owner.
- 4 – 2 – OHD letter dated November 13, 2009 to D. Mahendran.
- 4 – 3 – OBOH Bedroom Definition
- 4 – 4 – Map showing location of 17 Surfboat Lane, Orleans.
- 4 – 5 – Plot Plan of property and septic system from OHD files
- 4 – 6 – Building Permit Application, no date, not yet issued.
- 4 – 5 – Sewage Disposal System plan prepared by Ryder & Wilcox, dated June 15, 2009.

**Agenda Item 5 – 86B Route 6A**

- 5 – 1 – Request for Meeting/Hearing submitted by Michael Smith dated November 29, 2010.
- 5 – 2 – Site Plans by FELCO, Inc. and House Drawings prepared by Paul E. Bowker, P.E. dated February 9, 1998.
- 5 – 3 – OHD Letter to Michael Smith dated November 28, 2006

**Agenda Item 6 – “Be The Change”**

- 6 – 1 – Request for Temporary Food Permit and Variance
- 6 – 2 – Application for Temporary Food Permit

**Agenda Item 7 – Approve Minutes**

- 7 – 1 – OBOH Meeting Minutes of November 18, 2010
- 7 – 2 – OBOH Meeting Minutes of December 2, 2010

**Agenda Item 8 – Health Agent’s Report**

- 8 – 1 – Letter from the OHD to George Albert dated December 1, 2010.
- 8 – 2 – Letter from the OHD to George Albert dated December 6, 2010.
- 8 – 3 – Letter from the OHD to Robert & Lorraina McAdams dated December 3, 2010.
- 8 – 4 – Letter from the OHD to George Albert dated December 2, 2010.
- 8 – 5 – OHD Summary of Communications re: 33 Eli Rogers Road

**Agenda Item 9 – Correspondence / Old New Business**

- 9 – 1 – Reminder to Board members to bring the Board of Health Permits 2011
- 9 – 2 – CEC Letter dated December 1, 2010 re: 5 Old Colony Way
- 9 – 3 – OHD Letters and Owner Letters re: 7 Prence Lane
- 9 – 4 – GHD Letter re: December 6, 2010 Orleans Transfer Station Inspection Report
- 9 – 5 – GHD Letter re: September 13 and 16, 2010 Orleans Landfill Groundwater Monitoring Results.

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