



TOWN OF ORLEANS – BOARD OF HEALTH

MINUTES OF MEETING

May 5, 2011

The Board of Health convened its meeting at 2:03 p.m. on Thursday, May 5, 2011 in the Skaket Meeting Room of the Orleans Town Hall.

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

Excused: Robin Davis, Ph.D.

Agenda Item 1 – Public or Press

There was no one present for Public or Press.

Agenda Item 2 – Variance Request – 28 Captain Linnell Road

Mr. Canning distributed a letter dated May 4, 2011 from Jason Ellis of J.C. Ellis Design Company (*Exhibit 2-1*) reporting on the condition of the existing septic tank located at the subject property.

Mr. Robert Liska, a contractor, represented James and Donna Vivello, owners of the property at 28 Captain Linnell Road. He explained their plan to construct a sunroom which would be located two feet from the septic tank. Mr. Liska reviewed the letter from Mr. Ellis which noted that the septic tank is in very good condition, operating correctly, and not in need of pumping at the inspection on May 4, 2011. The proponent requested a variance from the ten-foot setback required by both Title 5 and the Orleans Board of Health Regulations for the distance between a septic tank and a foundation.

Mr. Canning reviewed that the existing three-bedroom septic system was upgraded in 2001, and that the sunroom is to be built on a slab on top of a portion of the existing patio. Mr. Liska explained the methodology for constructing the foundation using perimeter footings.

Board members questioned the existence of a site plan of the previous septic system upgrade and Mr. Canning suggested that the owner have an engineer provide plans for the new foundation. He also noted that full compliance could be met with installation of a new tank.

Board members also discussed the financial hardship to move or replace the septic tank. They discussed the dimensions of the new room versus the size of the existing patio.

On a motion by Attorney Taylor and seconded by Dr. Schneider, the Board of Health voted in the matter of 28 Captain Linnell Road to grant the request subject to a septic system designer assuring us that there would be no structural impact on plans with cross-section views and to scale. This approval is contingent on the Health Department's receipt of the required plans. The vote was 4-0-0.

Agenda Item 3 – Hearing Request – 22 Beach Road

Mr. Royal Thurston, owner of the property at 22 Beach Road was present for the hearing to appeal the Board's action at the meeting held on April 21, 2011 regarding his property. He explained his intention to sell the property and acknowledged that the septic system would be upgraded at that time. Mr. Thurston requested a permit to temporarily repair the cover in order to allow the tenants to remain until the house is sold. The septic system had been operating successfully for more than ten years until the recent negligent action by the pumper. He requested permission to repair the tank now and when the property is sold he would replace

the components. He understood that the system has been failed for its components, not as a non-functioning septic system. He requested a three-year extension of the Order to Repair.

Board members questioned whether the manufacture of a new cover to replace the broken one would be cost-effective for the owner if he was required to replace the entire septic system within a year.

Mr. Canning explained that a section of the cover of the tank has collapsed and has temporarily been covered with plywood. The Health Department issued an Order to Repair the system. Forrester Quinn suggested replacement of only the top of the tank. Mr. Canning explained that the owner must address the safety factor immediately and must make it structurally safe. The Order would remain in effect until the entire septic system is replaced.

Mr. Thurston explained that there is a company that will make a cover, with inspection or pumping ports, to fit over the top of the tank.

Board members discussed that the property must immediately be made safe to be used. Mr. Thurston noted that the property is currently occupied by three adults and one baby, and suggested that he be allowed to make the repair now and replace the system within twelve months.

On a motion by Attorney Taylor and seconded by Dr. Schneider, the Board of Health voted in the matter of 22 Beach Road to have the system made safe, which is the new lid, within 30 days. The septic system must be completely repaired within eighteen months. The vote was 4-0-0.

Agenda Item 4 – Approval Request – 24 Doane Road

Mrs. McKusick announced that although she would not recuse herself from this hearing, she is friends with the applicants.

Ms. Stephanie Sequin of Ryder & Wilcox represented Paul and Carol Robinson (also present), owners of the property at 24 Doane Road. She distributed a Current Approved Plan and Alternate Proposals (*Exhibit 4-1*). Ms. Sequin noted that this is a discussion with the Board for feedback about reducing the separation between the leach field and perched water on the property. Currently this is a two-bedroom second home and the proponent would like to remove it to build a new three-bedroom permanent home. Test holes showed clay, and mottling in the soil below the clay demonstrating evidence of perched water at times. The plan was prepared in compliance with Title 5 and Orleans Board of Health Regulations requiring that a leach field be five feet above perched water. However, once the clay is removed at the time of septic system installation, the perched water would be eliminated.

Ms. Sequin summarized that the plan is still valid as long as a Building Permit is applied for by June 20, 2012. This would allow construction of a three-bedroom house with a lower soil absorption system. A soil absorption system at a lower elevation would eliminate the need for a pump chamber and would eliminate the need for a raised system. This would require a variance from the Board of Health and Mass. Department of Environmental Protection. It would also require the Board of Health to allow a revised plan under the existing permit. An enclosed topographical map shows the grade level well above the groundwater level. In 1997 an inspection of the leaching pit, entirely below grade, showed that it was dry.

Ms. Sequin addressed that the current raised system prevents the owner from full use of the property (the back yard) for outdoor activities. She also discussed that reduction of the separation to groundwater or installation of an I/A system but would still need approvals and variances from the Board of Health and Mass. DEP.

Board members noted that tampering with the Nutrient Management Regulations was not an option and it was suggested that granting variances would still protect the environment if MDEP agreed. It was discussed that there are several variance options for the Board of Health to grant; and it was recommended that the proponent approach MDEP before formally requesting variances from the Board of Health.

Mr. Canning noted that MDEP would not consider a request until it has been approved by the Board of Health. He read the options available to the proponent for actions in this case. The options, which may include variances or approval from the Board of Health, available to the property owner appear to be the following:

Option 1 – Act on the existing permit for the three bedroom dwelling.

- Install SSDS prior to December 2012.
- Apply for the Building Permit prior to July 1, 2012.

Option 2 – See if the Board of Health would entertain a variance to ground water for construction of a new three-bedroom house and:

- Apply for and receive a variance for the depth to groundwater from the Board of Health and MDEP.
- Request that the Board of Health accept modification to the plan under the same permit.
- Install SSDS prior to December 2012.
- Apply for the Building Permit prior to July 1, 2012.

Option 3 – See if the Board of Health would entertain a variance to ground water for construction of a new three-bedroom house and:

- Apply for and receive a variance for the depth to groundwater from the Board of Health and MDEP.
- Receive a variance from the Nutrient Management Regulations for a new three-bedroom dwelling on 18,665 square feet of land.

Option 4 – See if the Board of Health would entertain a variance to ground water for construction of a new three-bedroom house, install a nitrogen removing septic component and:

- Apply for and receive a variance for the depth to groundwater from the Board of Health and MDEP.
- Apply for and receive a variance (no hardship) to the Nutrient Management Regulations.

Option 5 – See if the Board of Health would entertain a variance to groundwater and remain a two-bedroom dwelling (repair) and:

- Apply for and receive a variance for the depth to groundwater from the Board of Health and MDEP.

Board members further discussed the issue of perched water. Mr. Canning responded that the State is more restrictive in the matter of perched water. The Board may have granted a variance to perched water for repairs in the past, but not for installation of a new septic system.

Ms. Sequin agreed that she would prepare a Variance Request for a future meeting.

Agenda Item 5 – Approve Minutes

The minutes of the Board of Health meeting held on April 21, 2011 had previously been distributed to Board members for review and approval. Dr. Schneider suggested clarification of the minutes.

On a motion by Dr. Schneider and seconded by Mrs. McKusick, the Board of Health voted to approve the minutes of the meeting on April 21, 2011 as amended. The vote was 4-0-0.

Agenda Item 6 – Review Correspondence / Old and New Business

6 – 1 – A letter from the Orleans Health Department dated May 2, 2011 to Trudy Nordhausen regarding 18 Industry Way had previously been distributed to Board members for review and discussion. Mr. Canning reported that the Health Department had inspected the unit and the screens that had been installed did not properly fit the windows as they did not meet the requirements of Chapter II.

On a motion by Mrs. McKusick and seconded by Attorney Taylor, the Board of Health voted in the matter of 18 Industry Way to have a Show-Cause Hearing at the next meeting unless the issue is resolved permanently. The vote was 4-0-0.

6 – 2 – A letter from the Orleans Health Department dated April 26, 2011 to Daniels Recycling Company, Inc. had previously been distributed to Board members for review and discussion. Mr. Canning reported that an April 22, 2011 inspection showed many violations and exceedances of DEP and Site Assignment Approvals. Health Agents met with the office manager in charge of compliance, who requested information regarding compliant operation. She explained that DRCI is trying to reduce the volume of material stored on the site by adding an extra truck each day to truck it away. It was suggested that the Board conduct a Show-Cause Hearing in July unless matters have improved at DRCI by the June meeting.

6 – 3 – A letter from the Orleans Health Department dated September 20, 2010 and subsequent correspondence to Lee and Barbara Ragsdale regarding 7 Prence Lane had previously been distributed to Board members for review and discussion. Mr. Canning reported that this property is under Order to Repair after the Health Department received a complaint from the tenant about a sewage overflow on the property. The owner appealed the order asking for additional time but has taken no further action to rectify the situation.

On a motion by Attorney Taylor and seconded by Dr. Schneider, the Board of Health voted in the matter of 7 Prence Lane to have a Show-Cause Hearing at the June meeting. The vote was 4-0-0.

6 – 4 – A Request for Waiver in Difficulty in Locating Components at 195 Main Street, and Septic Inspection Report had previously been distributed to Board members for review and discussion. Mr. Canning reported that the distribution box is located under a concrete sidewalk. A fiber optic camera was used for inspection which showed all components operating properly. Board members discussed relocating the distribution box but it may not be easily relocated. It was the consensus of the Board members that they need more information before granting the requested waiver.

6 – 5 – A copy of the Town Meeting Warrant had previously been distributed to Board members for review and discussion. Mr. Canning noted that there were no Articles from either the Board of Health or Health Department.

6 – 6 – A Groundwater Discharge Permit Program Notice of Noncompliance for the Orleans Brewster Eastham Groundwater Protection District Tri-Town Sewage Facility had previously been distributed to Board members for review and discussion. Mr. Canning reported that staff has been responding to the violations and there have been no exceedances over the last six months.

6 – 7 – A report on Monitoring Alternative Onsite Septic Systems, prepared by the Barnstable County Department of Health and Environment, had previously been distributed to Board members for review and discussion. Attorney Taylor recommended sending a copy of this report to those property owners with I/A technology septic systems.

6 – 8 – A Summary of the Quarterly Gas Sampling Results at the Orleans Landfill had previously been distributed to Board members for review and discussion. Mr. Canning explained that there had been a high reading because a flare was not operating on the day of testing. However, everything is now operating properly.

6 – 9 – A memorandum from the Health Agent dated May 2, 2011 to the Parks Superintendent, Conservation Administrator, and Harbormaster regarding Bathing Beach Regulations had previously been distributed to Board members for review and discussion.

Agenda Item 8 – Hearing Continuation – 33 Eli Rogers Road – Housing Code Violations

Mr. Canning distributed photographs (*Exhibit 8-1*) taken of the property exterior at 33 Eli Rogers Road on April 25, 2011 during the inspection by the Health Department.

Attorney Kristen Rufo was present at the hearing and reported that Attorney Christopher Ward, trustee for the property, attended the inspection of the property on April 25, 2011. She explained that the tenant did not voluntarily leave the premises on April 15, 2011 as they had been ordered by the Court. After they were served on April 20th, they threw everything out of the house and left the debris outside before they vacated on April 25, 2011.

Attorney Taylor noted that the landlord was responsible for disposal of all the material left outside the shed as well as the tenants' debris to which Attorney Rufo agreed and requested thirty days to accomplish its removal.

Mr. Canning reviewed the summary of violations. Nothing changed since the February 14, 2011 inspection and there have been no improvements on the interior of the dwelling. The exterior of the dwelling is now in worse condition because of debris from both the tenant and owner. Ms. Rufo had asked that the owner be able to indefinitely postpone any action on the interior of the house because it will not be occupied; as well as sixty days to clean up the exterior. Mr. Canning requested removal of the underground fuel oil tank within sixty days.

Attorney Rufo requested that the tank be inspected not removed. Mr. Canning responded that the tank has been compromised after Mr. Albert had the tank ripped open and filled with sand. He was concerned that any residual heating oil could eventually seep through a rusted portion of the tank and contaminate the groundwater or rise to the surface and spill out, again, contaminating the surrounding soil.

Attorney Taylor asked if Attorney Rufo could represent and assure that the dwelling would not be occupied. In response Attorney Rufo agreed and again requested that interior repairs be indefinitely postponed because no one would be living in the dwelling.

Dr. Schneider expressed concern that a new owner might allow tenants to live in the dwelling. Mr. Canning suggested that the Board postpone to a date certain, re-inspect the dwelling to determine whether it is occupied, address the Order to Repair again and notify a new owner if the property is sold.

On a motion by Mrs. McKusick and seconded by Dr. Schneider, the Board of Health voted in the matter of the Housing Order on 33 Eli Rogers Road. I move the following:

- 1. The Order to Repair the dwelling be postponed for one year at which time it will be reviewed.**
- 2. The underground storage tank on this property must be removed and the land restored where the hole was within sixty days.**
- 3. The trash and refuse that has been demonstrated in the pictures dated April 25, 2011 and put into evidence at this hearing be completely cleaned up within thirty days.**
- 4. Attorney Rufo must inform the trustee of this land that if any action to sell this property is completed, that notification shall be made to the purchaser that the Board of Health orders remain in place.**
- 5. No one shall occupy the dwelling until the Board of Health approves it.**

The vote was 4-0-0.

Agenda Item 7 – Health Agent’s Report

Mr. Canning reported on the following:

Temporary Food Permits

The **Lower Cape Outreach Council**, represented by Larry Marsland and Ken Foster has requested a Temporary Food Permit for a Week of Hope to be held at the Odd Fellows Hall on Namskaket Road. This event will be held on Thursday, May 26, 2011 from 5:00 p.m. to 7:00 p.m. They will be serving hamburgers, hot dogs, bottled and canned water and soda. The food will be cooked on a mobile grill unit provided by Break-away - Hall Oil. The hot dogs will be boiled then grilled and hamburgers will be cooked to well done. Condiments will be squeeze bottles or individual packets. Hand washing facilities are available on the grill unit. The grill unit has covers over the grills and a tent will be used for food service. Restroom facilities are available inside the Odd Fellows Hall. Only disposable items will be used for customer service.

On a motion by Mrs. McKusick and seconded by Mrs. Suraci, the Board of Health voted to approve a Temporary Food Permit for the Lower Cape Outreach for a May 26, 2011, 5:00 p.m. to 7:00 p.m. function. The vote was 4-0-0.

Septic Installers License

Five Gazelle’s Inc. dba Central Contractor located at 222 Central Street, Saugus, MA has applied for a Septic Installers License.

On a motion by Dr. Schneider and seconded by Attorney Taylor, the Board of Health voted to grant a Septic Installers License to Five Gazelle’s Inc. conditioned on the Health Agent obtaining references from other towns. The vote was 4-0-0.

Bathing Beaches

The applications for bathing beaches have been sent to beach operators. In anticipation of the receipt of complete applications Mr. Canning requested that the Board of Health vote to approve the following as bathing beaches for the 2011 season:

Town Salt Water Beaches

Nauset Beach
Skaket Beach
Meeting House Pond
Pleasant Bay
Town Cove
Paw Wah Point
Kent’s Point
*Priscilla’s Landing
*Rock Harbor

Town Fresh Water Beaches

Crystal Lake
Pilgrim Lake
Bakers Pond

Private Salt Water Beaches

Hillbourne House
Quanset Harbor Club
Skaket Condominium Assoc.

On a motion by Mrs. McKusick and seconded by Mrs. Suraci, the Board of Health voted to allow the permits to be issued for 2011. The vote was 4-0-0.

I/A Technologies

Representatives from the Barnstable County Department of Health and Environment are scheduled to attend the Board’s June 2, 2011 meeting to discuss I/A Technologies. Mr. Canning will have summaries of the I/A technologies in Orleans prior to that meeting.

Liaison Commentary

Mrs. Christie recalled another case requiring a raised leach system which was very unsightly.

There was no further business to discuss during this meeting.

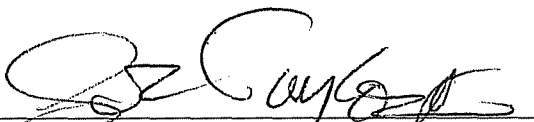
Agenda Item 10 – Adjournment

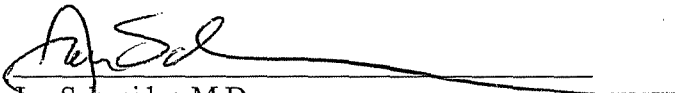
On a motion by Dr. Schneider and seconded by Mrs. Suraci, the Board of Health voted to adjourn this meeting at 3:24 p.m. The vote was 4-0-0.

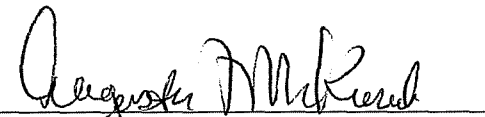
Respectfully submitted,


Lynda M. Burwell, Board Secretary

ORLEANS BOARD OF HEALTH

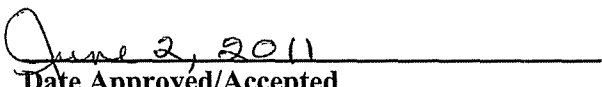

Attorney Job Taylor, III; Chairman


Jan Schneider, M.D.


Augusta F. McKusick, Vice Chairman

Excused
Robin K. Davis, Ph.D.


Elizabeth Suraci


Date Approved/Accepted

**DOCUMENTS PROVIDED FOR THE May 5, 2011
MEETING OF THE ORLEANS BOARD OF HEALTH**

Agenda Item 1 – Public / Press

1 – 1 – MDEP Food Protection Program – Farmers' Markets

Agenda Item 2 – Variance Request – 28 Captain Linnell Road

Exhibit 2 – 1 – Letter dated May 4, 2011 from J.C. Ellis Design Company, Inc.

2 – 1 – Letter dated April 25, 2011 from Robert J. Liska

2 – 2 – Variance Application Form with Certified Plot Plan dated November 9, 2004

2 – 3 – Plan dated November 8, 2004 by CADzooks Architectural Graphics

Agenda Item 3 – Hearing Request – 22 Beach Road

3 – 1 – Letter dated April 23, 2011 from Royal C. Thurston III

3 – 2 – OHD letter dated April 6, 2011 to Royal Thurston III

3 – 3 – Excerpt of OBOH Minutes of April 21, 2011 meeting

3 – 4 – Certificate of Compliance dated April 7, 1984

Agenda Item 4 – Approval Request – 24 Doane Road

Exhibit 4 – 1 – Summary of Request (undated) distributed by Stephanie Sequin

4 – 1 – Request for Meeting/Hearing dated April 27, 2011 with topographical map of location

4 – 2 – Site Plan dated November 14, 2007 prepared by Ryder & Wilcox, Inc.

4 – 3 – Certificate of Compliance dated December 4, 2007

Agenda Item 5 – Approve Minutes

5 – 1 – OBOH Minutes of April 21, 2011

Agenda Item 6 – Review Correspondence and Old/New Business

6 – 1 – OHD letter dated May 2, 2011 to Trudy Nordhausen

6 – 2 – OHD letter dated April 26, 2011 to Daniels Recycling Company, Inc.

6 – 3 – OHD letter dated September 20, 2010 and subsequent correspondence to Lee and Barbara Ragsdale

6 – 4 – Request for Waiver in Difficulty in Locating Components at 195 Main Street

6 – 5 – Town Meeting Warrant

6 – 6 – Groundwater Discharge Permit Program Notice of Noncompliance for the Orleans Brewster Eastham Groundwater Protection District Tri-Town Sewage Facility

6 – 7 – Report on Monitoring Alternative Onsite Septic Systems, prepared by the Barnstable County Department of Health and Environment

6 – 8 – Summary of the Quarterly Gas Sampling Results at the Orleans Landfill

6 – 9 – Memorandum from the Health Agent dated May 2, 2011 to the Parks Superintendent, Conservation Administrator, and Harbormaster regarding Bathing Beach Regulations

Agenda Item 8 – Housing Code Violations Hearing – 33 Eli Rogers Road

Exhibit 8 – 1 – 16 Photographs dated April 25, 2011

8 – 1 – OHD letters dated April 4, 2011 to George Albert and Robert and Loraina McAdams notification of hearing;

Excerpt of OBOH Minutes of March 3, 2011 meeting; Summary of April 25, 2011 Inspection; Summary of Communications from July 19, 2010 through April 25, 2011.