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**TOWN OF ORLEANS – BOARD OF HEALTH****MINUTES OF MEETING****October 20, 2011**

The Board of Health convened its meeting at 2:00 p.m. on Thursday, October 20, 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 Robin Davis, Ph.D. Also present: Health Agent Robert Canning; Susan Christie, Liaison from the Board of Selectmen, and Dale Fuller, Liaison from the Finance Committee.

Excused: Elizabeth Suraci

Agenda Item 1 – Public or Press

There was no one present for Public or Press.

Agenda Item 2 – Variance Request – 101 Route 6A

Mr. Jason Ellis of J.C. Ellis Design Company represented James and Katherine Kryzanski, owners of the property at 101 Route 6A. He explained that the Kryzanski's have already improved the exterior appearance of the building and are considering usage of the interior spaces. They propose to convert the first floor to office space and construct two two-bedroom apartments on the second floor. This would increase the septic flow rate from 200 gallons per day as previously approved in 1996 for retail space to 640 gallons per day. Mr. Ellis proposed removing the existing septic system and installing two new septic tanks in series (required for commercial/mixed use) and a new leach field. Three variances from Title 5 would be required in order to move forward with this plan.

1. A three foot (3') variance for the proposed leach area to the bank lot line.
2. A nine foot (9') variance for the proposed leach area to the foundation wall. He has suggested a poly flow barrier that would provide the same protection as the required twenty-foot separation.
3. A variance from the requirement to show a Reserve Area.

Mr. Ellis explained that he had researched the possibility of classifying the two apartments as low income.

Mr. Canning discussed the standard of review to be considered by Board members.

Board members noted that the property is less than a quarter of an acre. They requested that Mr. Ellis explain the hardship to the owners if this request is denied. He noted that the owner found more demand for offices rather than retail space as well as the continuing demand for low income apartment property. It would be difficult to utilize it as retail property because of an overabundance of vacant retail space. Mr. Ellis opined that this would be an opportunity to revitalize a property that has been an eyesore for many years. Board members also discussed the effect of increased septic effluent on the groundwater system and the need to have at least the center of town sewered to alleviate the stress to the groundwater in that area before approving any more increases in septic flow.

On a motion by Mrs. McKusick and seconded by Dr. Schneider, the Board of Health voted in the matter of 101 Route 6A. The standard of review for new construction requires that hardship to be proven as well as the same degree of environmental protection. Both of those standards have not been met. I move that we do not accept these variances. The vote was 4-0-0.

Agenda Item 3 – Hearing Request – 59 Finlay Road

Mr. Peter Fettig and Mr. Tom Menard, co-owners of the commercial condominiums at 59 Finlay Road were present for the hearing. Mr. Fettig explained that their distribution box and septic tank were designed for H-10 wheel loading and that they are located under a parking area. They were notified that Title 5 requires H-20 septic components located under a parking area. However, previous inspections approved the existing septic system. He explained that it would be a hardship to have to replace the components at this time. Mr. Menard noted that the original design called for H-20 components, but they were never utilized during construction and the installation was approved by the Health Department. He explained that several large vehicles have used the driveway and parking lot and there has been no evidence of damage to the system. They were required to raise the covers and that was inspected and approved. There have been inspections on sale of property that approved the system and after all those approved inspections he doesn't understand why they are required to make this major improvement.

Board members explained that although there has not been any damage done to the system to date, it could happen at any time in the future.

Mr. Canning reiterated that the original septic plan and installation were approved. However there was a revision in 1982 showing a different septic system in the front of the building requiring H-20 loading. The most recent report indicated that the septic tank and distribution box do not meet the requirement for H-20 loading. He discussed some options for rectifying the situation.

It was suggested that the owners obtain a second opinion from another septic inspector as well as confirm that the tank is not H-20, see if a slab can be poured over the components, or block off the components to prevent vehicles from driving over them.

On a motion by Attorney Taylor and seconded by Mrs. McKusick, the Board of Health voted in the matter of 59 Finlay Road to continue this item, which is Number 3 on our Agenda, until the first Board of Health meeting in 2012 which is at 2:00 p.m. on Thursday, January 5, 2012. The vote was 4-0-0.

Agenda Item 4 – Discussion/Approval Request – Nauset Farms, 199 Main Street

Mr. Rob Sethares, owner of the business at Nauset Farms, was present for the discussion. Mr. Sethares explained that because he is consolidating the Last Stop Deli business into Nauset Farms he would like to obtain approval to process game meat and also have prepared meals as previously approved for the Last Stop Deli, and he requested a 90-day extension to have someone approved in allergen awareness.

Mr. Canning outlined that two years ago Mr. Sethares had previously submitted a HACCP report for the Last Stop Deli which was subsequently approved by the Board of Health. He has requested that the HACCP report be approved for Nauset Farms in order to process game meat. Mr. Sethares explained how he would process the game meat and segregate it from other meat that is for sale.

On a motion by Mrs. McKusick and seconded by Dr. Schneider, the Board of Health voted in the matter of Nauset Farms, 199 Main Street, to allow special processing for deer and once the HACCP plan has been submitted and all the approvals have been made, we will grant this for this year. The vote was 4-0-0.

Mr. Canning addressed the location of the bakery in the upstairs area which had previously been approved by the Board of Health with the condition of review in one year to be certain that the walls could be kept clean. Mr. Sethares has requested approval to utilize the full kitchen upstairs to prepare meals.

Board members discussed the acceptable methods of sealing the raw wood upstairs to make it more easily cleanable. They also discussed the seasonal nature of the business.

On a motion by Attorney Taylor and seconded by Dr. Schneider, the Board of Health voted in the matter of Nauset Farms, 199 Main Street, to permit the upstairs to be used as a full kitchen for the next six months; and we will ask the Health Department to inspect it three months from now because that is past the end of the year to take a look at the wood and see if it is still in good condition. Obviously that will

have some bearing on how we go forward. The vote was 4-0-0.

Mr. Canning noted that Nauset Farms is now required to have someone certified in food allergies. Nauset Farms' previously certified person has left the business and they will need to have someone else certified. Mr. Sethares has requested a 90-day extension to meet this requirement.

On a motion by Attorney Taylor and seconded by Mrs. McKusick, the Board of Health voted in the matter of Nauset Farms, 199 Main Street, to grant the 90-day extension. The vote was 4-0-0.

Agenda Item 5 – Discussion – 4A Seaview Road

Mr. Peter Budryk, owner of the property at 4A Seaview Road, was present at the hearing. He explained that he and his wife purchased the larger house that is part of a condominium complex in 1997 and that the septic system had been inspected three years ago when one of the other properties was sold. Mr. Budryk believes that the requirement for condominiums to inspect septic systems every three years is not equitable (compared to single-family dwellings). He inquired if the Board of Health would be willing to grant a variance to waive the inspection.

Mr. Canning explained what Title 5 requires for single-family homes and for condominium units.

At 3:00 p.m. Attorney Taylor excused himself from the meeting and Mrs. McKusick continued the meeting indicating there remained a quorum of Board members.

Board members discussed the hardship issue and the size of the property containing the condominium units. Mr. Budryk explained that the 1.6 acre property contains five small cottages and the larger house and the configuration of septic systems. It was suggested that Mr. Budryk explore with the other unit owners having one septic inspection company conduct inspections of all septic systems at the same time every three years to see if it would provide a cost savings.

On a motion by Dr. Schneider and seconded by Dr. Davis, the Board of Health voted in the matter of 4A Seaview Road to extend his requirement for inspecting his system for one year. The vote was 3-0-0.

Mr. Budryk expressed his appreciation to Mr. Canning for his help in explaining the Title 5 requirement to him.

Agenda Item 6 – Discussion – Welstar – 42 South Orleans Road

Ms. Mahara Ashlie, owner of Welstar, was present at this hearing. She recently opened a small retail shop on the premises and wanted to discuss the possibility of obtaining a waiver from the provision requiring her to be licensed as a Retail Food Establishment. She showed photographs of the interior of the shop. (*Exhibit 6-1 and 6-2*)

Mr. Canning outlined that both the Federal Food Code and the State Sanitary Code, Chapter X requires a Retail Food Permit for the handling of prepackaged foods.

Board members discussed whether the sale of tea requires a Retail Food Permit, and whether Ms. Ashlie plans to continue the sale of tea.

Mr. Canning also discussed that the facility from which Ms. Ashlie plans to sell the tea does not meet the structural requirements as listed in the Federal Food Code.

On a motion by Mrs. McKusick and seconded by Dr. Schneider, the Board of Health voted in regards to 42 South Orleans Road, Welstar, who is seeking information about continuing the possibility of selling sealed packages of dry tea. I move we let her continue this practice in the 21 x 12 foot space until she follows through on the variance information to continue this. The vote was 3-0-0.

Ms. Ashlie also requested a waiver to the provision that she must have the septic system serving the property inspected for a change in use/increase in flow.

Mr. Canning explained that there was a change in use in 2009 that also required a septic inspection.

Ms. Ashlie explained that in 2009 she received approval by the Site Plan Review Committee to a change of use from commercial to mixed use. She noted that an engineer had provided a letter certifying that there is sufficient septic flow capacity for the proposed mixed-use.

Mr. Canning addressed the requirement in Title 5 that a change in use requires an inspection of the septic system. Board members outlined some of the reasons for an inspection and Ms. Ashlie responded that the system was recently installed in 2006. Mr. Canning explained that Ms. Ashlie would have to apply for a variance to the required septic system inspection.

On a motion by Mrs. McKusick and seconded by Dr. Schneider, the Board of Health voted in the matter of 42 South Orleans Road, Welstar. The property is in arrears of having a subsurface sewage inspection, although a letter has been provided by an engineer verifying that the flow is adequate. We give the property owner of Welstar one year to October 1, 2012 to get this problem solved and get the inspection. The vote was 3-0-0.

Agenda Item 7 – Bedroom Determination – 225 Brick Hill Road

Mr. Canning distributed three photographs of the exterior of the dwelling. (*Exhibit 7-1*)

Ms. Judy Bersin of Ryder & Wilcox represented the owner of the property at 225 Brick Hill Road. She explained that although there is considerable light, the family room still meets the criteria as a bedroom because of insufficient glazing area. The house has five bedrooms and a septic system designed for five bedrooms. Ms. Bersin described the sunroom noting that it has an exterior door, brick floor, and is 330 square feet in area. There is a balcony on the second floor leading to a bedroom and the breakfast area.

On a motion by Mrs. McKusick and seconded by Dr. Schneider, the Board of Health voted in the matter of 225 Brick Hill Road. Observing floor plans stamped by the Health Department October 13, 2011, the area labeled on these plans indicated as a two-story sunroom with a brick floor; because of its size and configuration and with the traffic pattern, it is not a bedroom. The vote was 3-0-0.

Agenda Item 8 – Approve Minutes

The minutes of the Board of Health meeting held on September 1, 2011 had previously been distributed to Board members for review and approval. Because there were not a quorum of members present that had been at that meeting, the minutes were held for a future meeting.

Agenda Item 9 – Review Correspondence / Old and New Business

9 – 1 – A memo from Mr. Canning dated October 7, 2011 had previously been distributed to Board members for review and discussion. He reviewed the Administrative Decisions made on October 6, 2011 as follows:

- A Variance Request for 101 Route 6A was not heard.
- An issue regarding 13 Country Crossing where the septic system was constructed for three bedrooms but the dwelling now has five bedrooms. The Assessor's records for 2004 indicate that it is a four-bedroom house. The owner agreed to record a Restriction at the Registry of Deeds limiting the dwelling to four bedrooms. This proposal was accepted as compliance with the Order to Repair.
- The president of the Pilgrim Lake Condominiums requested that they be allowed to schedule all ten-unit septic systems on the property to be inspected at the same time every three years. This proposal was accepted as compliance with Title 5.
- The owner of 16 Packet Landing requested a bedroom determination as he planned to enclose a screened porch which would meet the criteria of a bedroom. However, it was determined that a basement bedroom does not have adequate light and ventilation to be considered a bedroom. It was

determined that if the owner submits a letter to the Health Department showing that there is inadequate light and ventilation they would accept the proposed porch as the new fourth bedroom.

- A Tobacco Sales Permit was approved for Nauset Farms, 199 Main Street.
- A Temporary Food Permit was approved for the Orleans Fire Department Pizza Party.

On a motion by Dr. Schneider and seconded by Mrs. McKusick, the Board of Health, referencing Item 9-2 for the October 20, 2011 packet, voted to ratify all actions taken at the October 6, 2011 Administrative Hearing. The vote was 3-0-0.

9 – 3 – A Request for Waiver for Difficulty in Locating Components at 173 Beach Road had previously been distributed to Board members for review and discussion. The inspector was able to inspect the septic tank component; however, because an irrigation line runs above the system, the cover cannot be built up without relocating the irrigation line.

On a motion by Dr. Davis and seconded by Dr. Schneider, the Board of Health voted to accept the recommendation of the Health Agent on 173 Beach Road granting a waiver to raising the septic tank cover to within six inches (6") of grade. The vote was 3-0-0.

9 – 4 – A memo from the Town Clerk and Assistant Town Administrator dated October had previously been distributed to Board members for review and discussion.

9 – 5 – A notice of the Employee Flu Clinic dated October 7, 2011 had previously been distributed to Board members for review and discussion.

Agenda Item 11 – Health Agent's Report

Mr. Canning reported on the following:

Permits/Licenses

Mary Jane Curran, of the **Orleans Renewable Energy Committee**, had applied for a Temporary Food Permit for the Renewable Energy Technology event held on September 28, 2011 from 6:30 p.m. to 8:30 p.m. at Snow Library. They served store-bought cookies and juice purchased from Stop & Shop and served the juice in disposable cups and used tongs or tissue paper and napkins for service of the cookies. Mr. Canning had consulted with Chairman Taylor who agreed to issue the Temporary Food Permit.

On a motion by Dr. Davis and seconded by Dr. Schneider, the Board of Health voted to ratify the Orleans Renewable Energy Committee event on September 28, 2011. The vote was 3-0-0.

Flu Clinic

The September 23rd flu clinic was very successful. Approximately 400 Influenza vaccines were administered. For the first 1.5 hours there was a through-put of approximately fifty individuals per fifteen minutes (200/hour) without difficulty. Mr. Canning thanked the Council on Aging, the Cape Cod VNA, and the Orleans Health Department staff for all their efforts in making the clinic successful.

There will be a second public clinic in mid November (November 18th tentatively). This clinic will also be available to all residents of Orleans age 18 and older.

Daniels Recycling Company, Inc.

The Health Department has received the monthly operational report from Daniels Recycling Company, Inc. for the month of August 2011. The report was prepared to satisfy the monthly reporting requirements of the DEP's Authorization to Operate, and to satisfy the conditions of the Orleans Board of Health Site Assignment.

In August DRCI received 760.95 tons of C&D material (33.08 tpd) and 58.17 tons of brush (2.53 tpd) was received in 23 working days. There were no reported incidents of unacceptable materials found on the tipping floor and no positive results for asbestos were reported. However, the report does state that the interior mist-

ing system was not in operation on the day of the inspection and that one load of C&D was observed delivered at the time of the inspection.

In addition, on September 30, 2011 the Health Department conducted an inspection at the DRCI recycling facility. At the time of the inspection the following deficiencies were noted:

- Exceedances to the FAM allowance and/or DEP approvals are as follows:
 - Total C&D material on the property was 3973 cubic yards where FAM allowance is 400 cubic yards. Total material in container storage area was 305 cubic yards where 300 cubic yards is allowed per DEP approval.
 - Total material onsite (excluding chips and mulch) was 5325 cubic yards where FAM allowance is 1360 cubic yards.
 - Total unprocessed clean wood was 1120 cubic yards where FAM allowance is 500 cubic yards.
- There were six containers that were either uncovered or covered with pervious covers.
- Door B was missing refrigerator strips.
- There is only one HAZWOPER certified individual employed by DRCI. A minimum of two HAZWOPER certified personnel are required to be employed by the facility.
- The sign stating that no asbestos containing material is accepted at the site was missing.
- The sign identifying unacceptable material at the entrance to the facility is covered with vegetation and is not easily readable. Note: there exists a separate sign that clearly states that no asbestos containing material is accepted at this facility.

Mr. Canning referred to Item 10-1, Health Department letter dated October 5, 2011 to Daniels Recycling Company, Inc. and to Item 10-2, DRCI Material Totals for March through September 2011. He noted that in September there was over 6400 cubic yards of material stored on the site. He requested that the Board of Health request a meeting or hearing with DRCI to discuss several violations of their Site Assignment.

Mrs. McKusick noted, for the record, that she strongly supports and encourages a hearing to determine whether the Board of Health would modify, suspend, or revoke the Site Assignment for DRCI.

Fees

As fall approaches, the Health Department is preparing for the Board of Health's annual license renewals. Last year the Board of Health discussed looking at its fee schedule prior to the renewal of permits for calendar year 2012. The Health Department conducted a fee survey of several Cape and Island towns. A summary of this survey is in your packet. (Item 10-3) The Health Department also reviewed the amount of time typically spent on each permit. Based on these reviews this is the list of permit fees that the Board of Health should review and consider adopting. In particular, Mr. Canning discussed the fee for Refuse Collection.

On a motion by Dr. Davis and seconded by Dr. Schneider, the Board of Health voted to accept the changes in red in the Board of Health Fee Recommendations for 2012, and have a public hearing. The vote was 3-0-0.

The Board of Health will hold a Public Hearing on Thursday, November 3, 2011 at 3:00 p.m. in the Skaket Room to discuss and adopt the proposed Board of Health Fee Schedule to take effect January 1, 2012. A legal ad will be submitted to the Cape Codder Newspaper for publication on October 28, 2011.

Waiver Request

Mr. Canning distributed a Waiver Request submitted by F. L. Quinn (*Exhibit 10-1*) for difficulty locating components at 32 John Kenrick Road. The request being made is to waive the requirement to locate and raise the covers to the distribution box and septic tank outlet. This request is being made because the underground utility lines run above these covers. Mr. Quinn is proposing to inspect the outlet tee from the inlet end of the septic tank by lowering the liquid in the tank (pump) and viewing the presence of the tee with a mirror and flashlight. Prior to lowering the liquid in the tank Mr. Quinn will run water into the tank, open the cover to the

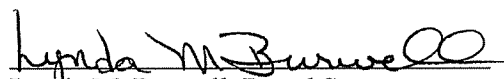
leach pit and determine if there is an uninterrupted flow between the two. The Board of Health reviewed and approved the same request in 2007.

On a motion by Dr. Schneider and seconded by Dr. Davis, the Board of Health voted to approve the Request for Waiver for Difficulty in Locating Components at 32 John Kenrick Road. The vote was 3-0-0.


Agenda Item 11 – Adjournment


On a motion by Dr. Schneider and seconded by Dr. Davis, the Board of Health voted to adjourn this meeting at 4:02 p.m. The vote was 3-0-0.


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.

Excused
Elizabeth Suraci

December 1, 2011
Date Approved/Accepted

**DOCUMENTS PROVIDED FOR THE OCTOBER 1, 2011
MEETING OF THE ORLEANS BOARD OF HEALTH**

Agenda Item 2 – Variance Request – 101 Route 6A

- 2 – 1 – Notification to bring material from previous packet
- 2 – 2 – OHD Notice to Abutters dated 10/7/11 – rescheduled hearing

Agenda Item 3 – Hearing Request – 59 Finlay Road

- 3 – 1 – Email request for a hearing dated 10/13/11
- 3 – 2 – OHD Order to Repair dated 9/29/11
- 3 – 3 – Title 5 Inspection Form
- 3 – 4 – OHD letter dated 8/3/11 to owners
- 3 – 5 – Sewage Disposal System Plan by Coastal Engineering Co. dated 1/15/82

Agenda Item 4 – Hearing Request – 199 Main Street

- 4 – 1 – Hearing Application Form from Nauset Farms, 199 Main Street and backup information

Agenda Item 5 –Hearing Request – 4A Seaview Road

- 5 – 1 – Hearing Application Form from Peter and Elinor Rudryk
- 5 – 2 – Excerpt of 310 CMR 15.300 and 15.301

Agenda Item 6 – License/Permit Application – 42 South Orleans Road

- 6 – 1 – Letter dated 10/17/11 from Mahara Ashlie, owner of Welstar
- 6 – 2 – Excerpt from 105 CMR 590.012 of the State Sanitary Code Chapter X
- 6 – 3 – Excerpt from 1999 Federal Food Code
- 6 – 4 – Excerpt from 310 CMR 15.000 Title 5

Exhibits 6-1 & 6-2 - photographs of the interior of the shop

Agenda Item 7 – Bedroom Determination – 225 Brick Hill Road

- 7 – 1 – Request for Hearing prepared by Ryder & Wilcox, Inc.
- 7 – 2 – Letter dated 10/13/11 from Wilkinson Associates
- 7 – 3 – No item – mis-numbered
- 7 – 4 – OHD Letter dated 10/5/11 to Ryder & Wilcox, Inc.
- 7 – 5 – Site Plan for 225 Brick Hill Road

Exhibit 7-1 – Three photographs of the exterior of the dwelling

Agenda Item 8 –Approve Minutes

- 8 – 1 – OBOH Minutes of September 1, 2011

Agenda Item 9 – Review Correspondence and Old/New Business

- 9 – 1 – R. Canning memo to OBOH dated 10/7/11 re: 10-6-11 Notes
- 9 – 2 – OBOH Administrative Hearing Notes, October 6, 2011
- 9 – 3 – Request for Waiver in Locating Components – 173 Beach Road
- 9 – 4 – Memo dated October from Town Clerk/Asst. Administrator re: State Conflict of Interest Law
- 9 – 5 – OHD Notice of Employee Flu Clinic

Agenda Item 10 – Health Agent's Report

- 10 – 1 – OHD letter to DRCI dated 10/5/11
 - 10 – 2 – DRCI Material Totals March – September 2011
 - 10 – 3 – OBOH Fee Schedule Recommendations
 - 10 – 4 – OHD Summary of Cape Cod Towns' Schedule of Fees
- Exhibit 10-1 - Request for Waiver in Locating Components – 32 John Kenrick Road