

**TOWN OF ORLEANS – BOARD OF HEALTH****MINUTES OF MEETING****November 17, 2011**

The Board of Health convened its meeting at 2:00 p.m. on Thursday, November 17, 2011 in the Skaket Meeting Room of the Orleans Town Hall.

Present: Chairman Job Taylor, III, Jan Schneider, M.D., and Elizabeth Suraci. Also present: Health Agent Robert Canning and Dale Fuller, Liaison from the Finance Committee.

Excused: Vice Chair Augusta McKusick, Robin Davis, Ph.D.

**Agenda Item 1 – Public or Press**

There was no one present for Public or Press.

**Agenda Item 2 – Approval Request – 143 Pochet Road**

Ms. Stephanie Sequin of Ryder & Wilcox represented Jim and Diane Sapienza, owners of the property at 143 Pochet Road. She distributed two Site Plans dated July 2, 2007 and dated Rev. November 8, 2011 (*Exhibit 2-1*). The Sapienza's have made several revisions to their plans to build on a vacant lot while trying to make their property buildable. Ms. Sequin requested a revision to the July 2, 2007 plan for four bedrooms with the septic system located in the front yard but without the previously-approved I/A system.

Mr. Canning discussed that the Permit Extension Act allows a two-year extension period and how it affects the different permits approved for this property.

Board members noted the difference in the number of bedrooms in the various plans. Ms. Sequin explained that the owner has now settled on four bedrooms. They also discussed all of the existing permits and their expiration dates as well as the soil conditions existing on the site. It was clarified that the only difference is the removal of the I/A system from the plan.

Ms. Sequin noted that the revision is really utilizing the five-bedroom plan with the Title 5 septic system in the rear yard but reducing the number of bedrooms to four and relocating the Title 5 septic system to the front.

**On a motion by Dr. Schneider and seconded by Mrs. Suraci, the Board of Health voted in the matter of 143 Pochet Road. This Board has discussed the property and a series of plans that have evolved over the years concurrent with the institution of the nitrogen regulations. The most germane previous and still current permit was one granted on January 13, 2010 which was for a four bedroom house with a system in the front with a voluntary construction of an I/A system. We are currently faced with a new request for almost the same four-bedroom house with almost the same location of a system in the front of the house, but without the previously voluntarily-offered I/A system being built. I move that in view of the fact that this permit is still current and that the I/A system that was in that permit was introduced voluntarily, and now is being voluntarily revoked, that we approve the request as presented. The vote was 1-2-0.**

Dr. Schneider explained his reasons for voting against his motion. Ms. Sequin requested assurance that the Health Agent could approve any permit submitted with the five-bedroom system located in the back yard. Mr. Canning confirmed that he could approve any existing permits as allowed by the Permit Extension Act.

### **Agenda Item 3 – Approve Minutes**

The minutes of the Board of Health meeting held on October 20, 2011 were not available for Board members to review.

### **Agenda Item 4 – Review Correspondence / Old and New Business**

4 – 1 – Septic System Inspection - Difficulty in Locating Components at 44 Loomis Lane had previously been distributed to Board members for review and discussion. The distribution box is six feet deep in the ground and located partially under a stone wall. The inspector was not able to inspect the distribution box. However, it might be possible to excavate to locate the distribution box, but it would result in considerable disruption of the wall and property. Water flow demonstrated that the distribution box is working properly.

**On a motion by Dr. Schneider and seconded by Attorney Taylor, the Board of Health, voted in the matter of 44 Loomis Lane to approve the waiver to the requirement to expose the distribution box and raise its cover. The vote was 3-0-0.**

4 – 2 – A Request for Waiver for Difficulty in Locating Components at 185 Beach Road had previously been distributed to Board members for review and discussion. The inspector was unable to inspect the septic tank component because the inlet cover is located under a retaining wall. From the outlet access the inspector was able to inspect the septic tank, and to observe that it is in good condition as are the distribution box and leaching facility.

**On a motion by Attorney Taylor and seconded by Dr. Schneider, the Board of Health voted in the matter of 185 Beach Road to approve the waiver as requested. The vote was 3-0-0.**

4 – 3 and 4 – 4 – Two memos from Patricia Henley of the Mass. Department of Health to Bob Collette of the Barnstable County Tobacco Control Commission, had previously been distributed to Board members for review and discussion. Mr. Canning noted that there will be fewer compliance checks than previously through the Tobacco Control Commission because of federal funding for the FDA to conduct inspections. Board members discussed what other inspections are conducted to be in compliance. Mr. Canning explained how the Commissions are involved in the community and what is included in the inspections for compliance.

### **Agenda Item 5 – Health Agent's Report**

Mr. Canning reported on the following:

#### **Permits/Licenses**

Rooter Man of Cape Cod has applied for a Septage Collection and Transportation license. Mr. Canning explained that he had inspected their truck and that the company meets the requirements for a license for the remainder of 2011 and for 2012.

**On a motion by Dr. Schneider and seconded by Mrs. Suraci, the Board of Health voted in the matter of Rooter Man of Cape Cod to grant a Septage Collection and Transportation license for the remainder of 2011 and for 2012. The vote was 3-0-0.**

*Because there was considerable time before the scheduled 3:00 p.m. hearing, Board members made use of the time to discuss some items not listed on the Agenda.*

Attorney Taylor inquired about a variance requested by the owners of 23 Herring Brook Lane and was informed that it will be discussed at the next meeting.

### **Farmers' Market**

Mr. Canning discussed developing guidelines to review and approve various vendors. It was noted that in order to continue selling their products, some vendors might be required to obtain a Temporary Food Permit every two weeks. Board members discussed the length of the Farmers' Market season and the various products sold.

Attorney Taylor suggested that Mrs. Suraci work with the Health Department to develop proposals for Board approval. Mr. Canning recommended that a representative from the Farmers' Market be included in the discussion of guidelines.

The Board's sensitivity to competition to local businesses from Farmers' Market vendors was also discussed. It was noted that the Orleans' Farmers' Market is Number 1 or Number 2 on the Cape and one of the top ten in the Commonwealth. Non-food items such as soaps and candles might not be appropriate for sale at the Farmers' Market in the future.

Mr. Canning acknowledged the Health Department's great relationship with the Farmers' Market.

### **20 Hopkins Lane**

Mr. Canning reported that Town Counsel had written a letter to the owner and to date there has not been any response. He explained the Order to Repair a cesspool upon sale of the property to a family member. The new owner was granted an extension in the time to have the cesspool upgraded; however, there has been no further action by the owner since then and it might be necessary to initiate court action to obtain compliance.

Attorney Taylor requested that Mr. Canning send another letter requesting that the owner come to the next meeting of the Board of Health. Mr. Canning suggested that he wait for a response to Town Counsel's letter. Attorney Taylor expressed that it is frustrating when owners ignore orders from the Health Department.

*At this point the Chairman declared a 15 minute adjournment.*

### **Agenda Item 6 – Daniels Recycling Company, Inc. – 3:00 p.m. Hearing**

Mr. Steve Daniels of DRCI and Attorney Michael Parker of Rackemann, Sawyer, & Brewster of Boston representing DRCI were present at the hearing. Also present, Erika Woods, Assistant Health Agent and Margie Fulcher, Chairman of the Board of Selectmen.

Mr. Canning read his introduction (*Item 6-2*) explaining the reasons for calling this hearing including the various deficiencies and violations of the MDEP and Orleans Board of Health Site Assignment observed during several site inspections since April 2010.

Attorney Taylor listed several dates of violations and only two occasions since 2008 when DRCI was in complete compliance. He suggested allowing 60 days for DRCI to come into compliance with the Site Assignment and scheduled an inspection of DRCI on January 16, 2012. At the Board of Health meeting on January 19, 2012 they will review whether compliance has been met following the January 16, 2012 inspection.

Dr. Schneider stated that the numbers are egregious, and several times over the acceptable limits. Although closing DRCI might result in loss of some of their customers, he recommended closing the business until everything is cleaned out and then reopen with a clean tipping floor. He noted that the community is outraged.

Mrs. Suraci observed that part of problem is that people don't always have a place to dispose of their debris and DRCI can meet that need. However, the material is not being moved out in a timely manner.

The material is not pleasant, there is dust that is toxic, the misting system is not working properly resulting in a respiratory problem, and some refrigerator strips are missing. She agreed with allowing the 60 days for compliance as recommended by Attorney Taylor.

Attorney Taylor explained further the need to have a contingency plan for several unknown conditions.

Attorney Parker explained that Mr. Daniels wants to work with the Board of Health to resolve the issues. He noted that there are certain operational issues that make it difficult to be in strict compliance every day. He acknowledged that DRCI had rectified some of the issues except the excess material.

Mr. Daniels apologized to the Board and noted the lack of communication. He acknowledged that there are operational issues and the need to communicate those issues to the Health Department. Mr. Daniels agreed with both suggestions and explained that he had developed a hybrid of both suggestions. He requested 30 days to work on the material issues and will voluntarily limit the amount of material received during that time, and will divert his own material to another processing plant if necessary. If in 60 days this method is not successful in eliminating the abundance of material, he would discuss these issues further with the Board of Health. Mr. Daniels also suggested bi-monthly meetings with the Health Department to discuss progress issues.

Attorney Taylor stated that DRCI must be 99.9 percent in compliance on all requirements. The town needs to have DRCI continue in business but only if they are in compliance. They must develop a contingency plan to keep the facility clean.

**On a motion by Attorney Taylor and seconded by Dr. Schneider, the Board of Health voted to give DRCI 60 days from today, which means January 16, 2012, to be in compliance with all of the regulations you have to comply with, and you know them all. If you have any questions about them, the Board of Health can answer those for you. We have seen times when there are only two violations; and we have seen times when there were twelve violations. We want it to get down to half a violation because you are a little bit over here, that's the 99.9 percent; and it doesn't slide back, it stays current. And that means, I don't know whether you are going to have to hire more people, or what you are going to have to do, but that's your business but we have an obligation. You have 60 days to get in compliance, you have 30 days to give the Board a contingency plan, and that is something that needs to be sent in and we will comment on it and get it back to you. By the end of the 60 days we should have a contingency plan that we are all comfortable with, and a site that is in compliance. Hopefully we will go forward without anybody here being upset with you and without you being upset with anybody here.**

**You have to keep in mind that there are neighbors over there and they want to live their lives and they want to be protected and that is not what we get paid to do, we get paid to make sure that you are following the regulations you have to follow, and that will protect them. So, a contingency plan within 30 days, and full compliance by January 16, 2012. Review of the compliance check and contingency plan to be put out between each other on January 19, 2012 which is a Thursday.**

Mr. Daniels invited board members to observe the operation over the next thirty to sixty days.

Mr. Canning cautioned that the contingency plan must address the misters.

**The vote was 3-0-0.**

Dr. Schneider emphasized the fact that the Board of Health members are elected to their positions, and do not receive any compensation for their time on behalf of the Board.

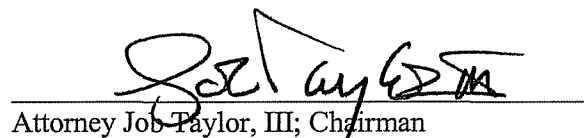
### **Agenda Item 11 – Adjournment**

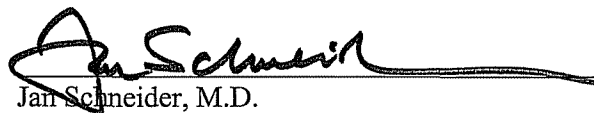
**On a motion by Dr. Schneider and seconded by Attorney Taylor, the Board of Health voted to adjourn this meeting at 3:38 p.m. The vote was 3-0-0.**

Respectfully submitted,

  
Lynda M. Burwell, Board Secretary

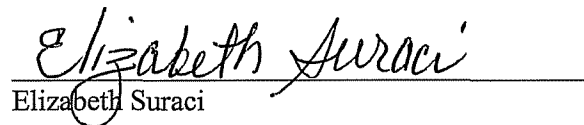
**ORLEANS BOARD OF HEALTH**

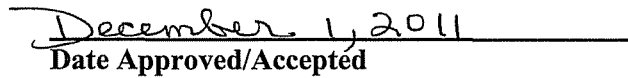
  
Attorney Job Taylor, III; Chairman

  
Jan Schneider, M.D.

Excused  
Augusta F. McKusick, Vice Chairman

Excused  
Robin K. Davis, Ph.D.

  
Elizabeth Suraci

  
**Date Approved/Accepted**

**DOCUMENTS PROVIDED FOR THE NOVEMBER 17, 2011  
MEETING OF THE ORLEANS BOARD OF HEALTH**

**Agenda Item 2 – Approval Request – 143 Pochet Road**

- 2 – 1 – Request for Meeting/Hearing prepared by Ryder & Wilcox
- 2 – 2 – Excerpt from the Orleans Nutrient Management Regulations
- Exhibit 2-1 – Two SDS Plans, one dated 7/2/07 and one dated 11/8/11

**Agenda Item 3 – Approve Minutes**

- 3 – 1 – OBOH Minutes of October 20, 2011 – Not included in packet

**Agenda Item 4 – Review Correspondence and Old/New Business**

- 4 – 1 – Request for Waiver in Locating Components – 44 Loomis Lane
- 4 – 2 – Request for Waiver in Locating Components – 185 Beach Road
- 4 – 3 – Memo dated 8/11/11 from Patricia Henley, MDPH to Bob Collett BCDPH
- 4 – 4 – Memo dated 8/33/11 from Patricia Henley, MDPH to Bob Collett BCDPH

**Agenda Item 5 – Health Agent's Report**

**Agenda Item 6 – Hearing – DRCI – 3:00 p.m.**

- 6 – 1 – Letter dated 11/4/11 from OHD to DRCI
- 6 – 2 – Health Agent Introduction for 11/17/11 Hearing
- 6 – 3 – Material Totals – April 2010 – September 2011
- 6 – 4 – OBOH Summary of DRCI Inspection Reports
- 6 – 5 – OHD Memo dated 10/27/11 from E. Woods to File
- 6 – 6 – Town Counsel Memo dated 3/17/08 to Health Agent
- 6 – 7 – Regulatory Provisions Applicable to the DRCI Facility
- 6 – 8 – Unofficial Copy of the DRCI Site Assignment Application
- 6 – 9 – Letter dated 1/16/08 from MDEP to DRCI – Permit Approval with Conditions
- 6 – 10 – Letter dated 7/7/10 from MDEP to DRCI – Approval with Conditions
- 6 – 11 – Letter dated 5/11/11 from DRCI to OHD
- 6 – 12 – Letter dated 7/22/10 from OHD to DRCI
- 6 – 13 – Excerpt of OBOH Minutes August 12, 2010
- 6 – 14 – Two photos of DRCI dated 9/30/11 and two photos of DRCI dated 4/22/11
- Exhibit 6-1 – Material Totals – April 2010 – September 2011