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TOWN OF ORLEANS – BOARD OF HEALTH MINUTES OF MEETING

December 15, 2011

The Board of Health convened its meeting at 2:08 p.m. on Thursday, December 15, 2011 in the Skaket Meeting Room of the Orleans Town Hall.

Present: Chairman Job Taylor, III, Vice Chair Augusta McKusick, Jan Schneider, M.D., Elizabeth Suraci 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.

Agenda Item 1 – Public or Press

There was no one present for Public or Press.

Agenda Item 2 – Hearing – 103 Route 6A

Mr. Frank Mason, owner of the property at 103 Route 6A, was present for this hearing. He explained that upon his purchase of the property he was required to install a Title 5 septic system, and his subsequent appeals for extensions. Mr. Mason discussed his request to change inspections of the septic system from every year to once every two or three years. If the septic tank passes each inspection, Mr. Mason would like to continue the Order of Compliance for an additional two or three years.

Mr. Canning read through the Summary of Events regarding 103 Route 6A.

Board members discussed the small size of the property and the potential for problems during a three-year period. It was observed that the leach facility consists of a cesspool at this commercial property. Mr. Canning explained the probability of collapse of the cesspool. Mr. Mason explained the location of the cesspool and the cost and inconvenience of having an annual inspection. Mr. Canning explained that it is not necessary to conduct a full inspection of the septic system, but just the cesspool.

On a motion by Attorney Taylor and seconded by Dr. Schneider, the Board of Health voted with respect to 103 Route 6A, Mr. Mason's property, that we require an inspection every eighteen months, every year and a half, so that's two every three years; and we'll do it for three years and check back three years from now. The vote was 5-0-0.

Agenda Item 3 – Approve Minutes

The minutes of the Board of Health meeting held on November 3, 2011 had previously been distributed to Board members for review and discussion.

On a motion by Dr. Schneider and seconded by Dr. Davis, the Board of Health voted to approve as presented the minutes of the meeting held on November 3, 2011. The vote was 3-0-2. Mrs. Suraci and Mrs. McKusick abstained because they had not been present at that meeting.

The minutes of the Board of Health meeting held on December 1, 2011 had previously been distributed to Board members for review and discussion.

On a motion by Dr. Schneider and seconded by Mrs. McKusick, the Board of Health voted to approve as presented the minutes of the meeting held on December 1, 2011. The vote was 5-0-0.

Agenda Item 4 – Review Correspondence / Old and New Business

4 – 1 – The Semi-Annual Inspection of the Orleans Transfer Station was included in the GHD

letter dated November 16, 2011 and had previously been distributed to Board members for review and discussion. Mr. Canning reported that all items were found to be in compliance.

4 – 2 – A letter dated November 14, 2011 from Mass. Cancer Registry with the Cancer Incidence in Massachusetts from 2004 to 2008 Report had previously been distributed to Board members for review and discussion. Mr. Canning reported that there is a significant incidence of lung/bronchial and prostate cancer in Orleans, however the overall rate of cancer occurrences in Orleans is what might be expected.

4 – 3 – The Orleans, Brewster, Eastham Groundwater Protection District Board of Managers Meeting minutes of October 27, 2011 had previously been distributed to Board members for review and discussion.

4 – 4 – A letter dated November 7, 2011 from Wastewater Treatment Services, Inc. regarding the wastewater treatment system located at 19 School Road had previously been distributed to Board members for review and discussion. Mr. Canning reported that the nitrogen levels are considerably lower than in the past.

Agenda Item 5 – Health Agent's Report

Mr. Canning reported on the following:

Food Establishment Inspections

The Federal Food Code requires that the Board of Health inspect a food establishment at least once every six months and Mr. Canning reported that he is pleased to inform the Board of Health that this requirement has been satisfied for calendar year 2011. There were a total of 347 inspections of food establishments this year in Orleans including inspections for regular semi-annual, pre-opening, follow-up, complaints, food-borne illnesses, etc. He complimented Erika Woods and Lee Manillo for their efforts.

The Board of Health expressed appreciation to the Health Department for their extraordinary effort expended in all their work.

At this point Attorney Taylor, on behalf of the other Board members, presented Mr. Canning with a gift of a Christmas luncheon for the Health Department staff in appreciation of their excellent work.

20 Hopkins Lane

An order to repair a septic system (cesspools) was issued to the owner of 20 Hopkins Lane on March 1, 2006. The Board of Health granted extensions to the order on April 6, 2006 (90 days ±) and on December 18, 2008 (1 year). On July 8, 2010, at a Board of Health hearing, the owner informed the Board that he would make the necessary repairs. The Board continued the hearing and required the owner to re-appear before the board on August 12, 2010 to give a status report on the repair. The owner did not appear at this hearing, and has not responded to multiple requests of the Health Department and Town Counsel. On December 13, 2011 Mr. Canning met with Town Counsel regarding the owner's failure to respond to a notice. The town has attempted every various means of communication, telephone, certified letters, site visits and delivery by a Constable. Based the lack of response Town Counsel is exploring options for the town. These include:

- File a complaint in court.
- Record a restriction on the deed stating that the property cannot be sold without the order being resolved.
- Conduct an inspection on the site with the Building Inspector to determine if there is a public safety issue (expose and observe the interior of the cesspool to determine if it is being used and if it is structurally sound). The State Building Code may have regulations regarding a potential collapse of the cesspool.
- Interruption of water service to the section of the dwelling served by the cesspool.
- Secure the area surrounding the cesspool so if there is a collapse, no one would be injured.

Mr. Canning will meet with Town Counsel to review the various options and take the appropriate action (which may require further votes by the Board).

Board members inquired if there is a tenant. Mr. Canning explained that there is a Title 5 for the main portion of the dwelling and that the cesspool serves another area of the house, perhaps for a tenant. They discussed whether connecting that cesspool service to the main septic system would be sufficient to satisfy the Order.

Nutrient Management Regulations

At the December 1, 2011 meeting the Board discussed a strategy for addressing fluctuating sewage design flows when enforcing Section 7.3 of the Nutrient Management Regulations. At that meeting the Board requested a draft policy to address this situation using the following guiding principles:

- The purpose of the regulation is to regulate the increase in nutrients entering the ground water from septic systems.
- The regulation was written to address the increase in nutrients from sewage disposal, not to reduce the existing sewage flow.
- As situations change, in both commercial and residential settings, there is the potential that the sewage design flow may fluctuate.
- The policy should consider the effective date of the regulation which was July 1, 2009.
- The policy should also consider the impacts of the regulations' Transition Rules and the Massachusetts Permit Extension Act.

Mr. Canning distributed his proposed draft policy for discussion. (*Exhibit 5-1*)

Section 7 General Requirements

- 7.1 No Disposal System Construction Permit shall be issued by the Board of Health or its Agent for any of the projects described in Section 6.1 above unless the proposed system is designed to receive or shall receive four hundred forty (440) gallons per day or less per forty thousand square feet (40,000) of lot area or ratio thereof.
- 7.3 No facility described in Section 6.1 shall be expanded or have a change of use that increases the design flow until a Disposal System Construction Permit has first been obtained, unless the Board of Health, or its Agent, determines that the existing sewage disposal system is adequate (per Title 5 and the Orleans Board of Health Subsurface Sewage Disposal Regulations), including documentation that the facility's design flow is less than or equal to 440 gallons per 40,000 square feet of lot area or the ratio thereof.

Board members discussed the draft regulation and agreed that this revision would meet the needs of a property owner. The new policy change reads as follows:

While reviewing a proposal for an increase in flow under the provisions of Section 7, General Requirements, (7.3), the Board of Health will consider the flow that was legally in existence as of the effective date of the regulations (July 1, 2009), or allowed through the Nutrient Management Act Transition Rules, including the Permit Extension Act, as the property's established flow. This established flow will be used in assessing whether the applicant is increasing the sewage design flow of the facility.

Once the established flow is determined, the facility's sewage design flow could fluctuate at or below that level.

It is the applicant's responsibility to prove, to the satisfaction of the Board of Health, the legal established flow of the facility as outlined above.

On a motion by Dr. Schneider and seconded by Mrs. Suraci, the Board of Health voted to accept the new policy as written. The vote was 5-0-0.

On a motion by Dr. Schneider and seconded by Mrs. Suraci, the Board of Health voted to adjourn the meeting for 20 minutes until 3:00 p.m. The vote was 5-0-0.

Attorney Taylor reconvened the meeting at 3:00 p.m.

Agenda Item 6 – Hearing 3:00 p.m. – 7 Prence Lane

Mr. James Badera, Jr., agent, represented Lee and Barbara Ragsdale, owners of the property at 7 Prence Lane.

Mr. Canning entered into the record the summary of events since September 17, 2010 when a sewage overflow was reported at 7 Prence Lane as follows:

On July 20, 2010, an order was issued to the owner of 7 Prence Lane after the Health Department observed sewage on top of the ground at that location. Because of lack of compliance the Board of Health called for a show cause hearing on August 4, 2011 at which time the Board modified the order. On December 1, 2011, after reviewing the history of the property, including the lack of compliance with the August 4th modifications, the Board of Health voted to hold a hearing to determine what legal action is necessary to secure compliance. The following is a summary of the history of the matter.

- 9-17-10: Orleans Health Department received a complaint of a sewage overflow at 7 Prence Lane. Upon receipt of the complaint the Health Department conducted an on-site inspection at which time sewage was observed flowing from the area of a cesspool in the rear of the dwelling. Orleans Health Department called owner to notify them that the cesspool must be pumped. System was pumped 9-18-10 by Daniels.
- 11-15-10 Health Department wrote to owner. Health Department records do not reflect that the property has been brought into compliance with the 9-20-10 order to repair the septic system. Received 11-20-10
- 12-12-10: Orleans Health Department received letter from Ms. Ragsdale requesting an extension to the 9-20-10 order.
- Over the next several months the Health Department attempted to schedule a hearing.
- May 5, 2011: Board of Health discussed history of property and voted to hold a show cause hearing.
- 8-4-11: Board of Health meeting – Board of Health voted to modify order to allow for an extension to February 4, 2011 conditioned on the following:
 - Property to be monitored, at a minimum, monthly, and pumped as needed.
 - A copy of the inspections to be submitted to the Health Dept. within 15 days of occurrence.
- 8-18-11: Health Department wrote to owner notifying them of the Board of Health 8-4-11 decision. Certified Mail RRR. Received 8-22-11.
- 10-11-11: Health Department wrote to owner, Board of Health conditions not being met, Health Department has yet to receive an inspection report. Owner in non-compliance. Certified Mail RRR. Received 10-21-11.
- 10-21-11 Health Department received phone call from owner who followed up with email. She has contacted DRCI for follow-up and is waiting to hear back from them.
- 11-9-11: Health Department wrote to owner, Board of Health conditions not being met; Health Department has yet to receive an inspection report. Owner in non-compliance. Certified Mail RRR. Received 11-19-11. No response.
- 12-1-11: Board of Health, after reviewing the history of the property, voted to hold a hearing to determine what legal action is necessary to secure compliance.
- 12-2-11: Health Department issued a notice of a hearing to the owners of the property. Certified mail RRR. Received 12-10-11.
- 12-6-11: Health Department posted the tenant's notice of the hearing at the entry door of the lower dwelling unit.
- 12-7-11: Ms. Ragsdale called the Health Department to state that her representative will be attending the December 15th hearing. Ms. Ragsdale is looking to install the septic system.
- 12-9-11: James Badera came to the Health Department to review the history of the property. Mr. Badera has been hired by Ms. Ragsdale and will be responsible for getting the septic system repaired.

**BOARD OF HEALTH —DECEMBER 15, 2011
2:00 PM - SKAKET MEETING ROOM
AGENDA**

ORLEANS TOWN CLERK

K. D. Kelly, Ass

'11 DEC 13 1:38PM

1. Public/Press
2. Hearing: 103 Route 6A
Owner/Agent Frank J. Mason Jr.
3. Approve Minutes: November 3, 2011
December 1, 2011
4. Review Correspondence/Old New Business
Possible Action Items
 - Semi-annual transfer station inspection
 - Mass Cancer Registry
 - Board of Managers Meeting Minutes 10-27-11
 - Field Inspection Report FAST 19 School Road
5. Health Agent's Report
Possible Action Items
 - Update 20 Hopkins Lane
 - Draft Policy, Nutrient Management Reg. Established Flow
6. 3:00 PM Hearing 7 Prenc Lane
Owner: Ragsdale
Agent: James Badera
7. Adjournment

- 12-14-11: James Badera applied for a Disposal Works Construction Permit for the property. Mr. Badera also informed the Health Department that the cesspools have been inspected and pumped.
- 12-15-11: Health Department received copy of an invoice from Discount Septic Pumping stating that the ponding levels were approximately 12" below the cesspool covers. And the ponding levels will be checked periodically as required by the Health Department to make sure the cesspools are not backing up.

Mr. Badera outlined his involvement in the property since December 7, 2011 when he was hired.

- Met with the Health Department to review the history of the project.
- Contacted a system installer who is preparing an estimate for construction.
- Ready to begin installation as soon as Disposal Works Construction Permit is issued.
- Existing cesspools were inspected and pumped on December 13, 2011.
- Applied for Disposal Works Construction Permit and Administrative Review with Conservation Commission.
- Goal is to monitor the existing system and install the new system and have it approved by the Health Department before the February 4, 2012 deadline.


Board members discussed the location of the cesspools and Mr. Badera showed the proposed plan of component location. Mr. Badera was complimented on his thorough presentation and expeditious schedule for completion.

On a motion by Attorney Taylor and seconded by Mrs. Suraci, the Board of Health voted to adjourn this hearing until January 19, 2012 and have a status report from Mr. Badera at that meeting at 2:30 p.m. The vote was 5-0-0.

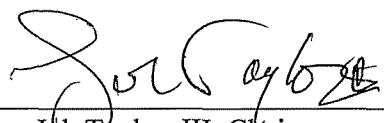
Agenda Item 8 – Adjournment

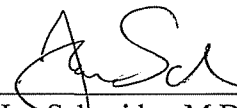
On a motion by Attorney Taylor and seconded by Dr. Davis, the Board of Health voted to adjourn this meeting at 3:13 p.m. The vote was 5-0-0.

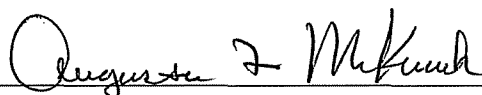
Respectfully submitted,

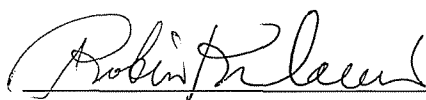

Lynda M. Burwell, Board Secretary

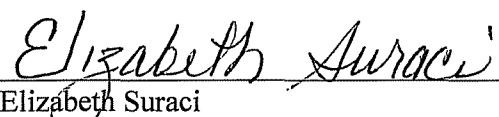
ORLEANS BOARD OF HEALTH

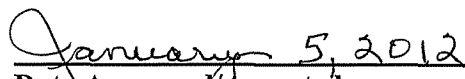

Attorney Job Taylor, III; Chairman


Jan Schneider, M.D.


Augusta F. McKusick, Vice Chairman


Robin K. Davis, Ph.D.


Elizabeth Suraci


Date Approved/Accepted

**DOCUMENTS PROVIDED FOR THE DECEMBER 15, 2011
MEETING OF THE ORLEANS BOARD OF HEALTH**

Agenda Item 2 – Hearing – 103 Route 6A

- 2 – 1 – Frank Mason letter/request dated 11/22/11
- 2 – 2 – Orleans Health Department Summary of Events
- 2 – 3 – Orleans Health Department letter to Frank Mason dated 2/8/11
- 2 – 4 – Orleans Health Department letter to Frank Mason dated 2/26/08
- 2 – 5 – Orleans Health Department letter to John and Mary Brown dated 8/17/05

Agenda Item 3 – Approve Minutes

- 3 – 1 – Board of Health Minutes of November 3, 2011
- 3 – 2 – Board of Health Minutes of December 1, 2011

Agenda Item 4 – Review Correspondence and Old/New Business

- 4 – 1 – GHD letter dated 11/16/11 – Semi-Annual Inspection of Orleans Transfer Station
- 4 – 2 – MDPH letter dated 11/14/11 – Mass. Cancer Registry 2004-2008
- 4 – 3 – OBE Groundwater Protection District Board of Managers Meeting Minutes of 10/27/11
- 4 – 4 – Wastewater Treatment Services Field Inspection Report – 19 School Road

Agenda Item 5 – Health Agent's Report

Exhibit 5-1 – DRAFT Orleans Board of Health Nutrient Management Regulation – Established Flow Policy

Agenda Item 6 – Hearing – 7 Prence Lane

- 6 – 1 – Orleans Health Department letter dated 12/2/11 to Ragsdale
- 6 – 2 – Orleans Health Department Hearing Notice to tenant dated 12/6/11
- 6 – 3 – Orleans Health Department Summary of Events dated 12/12/11
- 6 – 4 – Orleans Health Department letter dated 11/9/11 to Ragsdale
- 6 – 5 – Orleans Health Department letter dated 10/11/11 to Ragsdale
- 6 – 6 – Orleans Health Department letter dated 8/18/11 to Ragsdale
- 6 – 7 – Excerpt of Board of Health Meeting Minutes dated 8/4/11
- 6 – 8 – Orleans Health Department letter dated 9/20/10 to Ragsdale