

## TOWN OF ORLEANS – BOARD OF HEALTH MINUTES OF MEETING

August 16, 2012

The Board of Health convened its meeting at 2:00 p.m. on Thursday, August 16, 2012 in the Skaket Meeting Room of the Orleans Town Hall.

Present: Chairman Job Taylor, III, Vice Chair Elizabeth Suraci, Augusta McKusick, Jan Schneider, M.D., and Robin Davis, Ph. D. Also present: Health Agent Robert Canning and Finance Committee Liaison Dale Fuller.

### **Agenda Item 1 – Public or Press**

There was no one present for Public or Press.

### **Agenda Item 2 – Variance Request – 14 Orissa Drive**

Mr. Jason Ellis of J.C. Ellis Design Co. represented Robert and Beatrice Heath, owners of the property at 14 Orissa Drive. The property, with a three-bedroom dwelling, is for sale. Currently there is a Title 5 septic system that had been installed in 1995; however the leach pit has failed necessitating an update of the system. Mr. Ellis proposes to install a new H-20 1500 gallon septic tank under the driveway and a new leaching system. He discussed a discrepancy in the number of bedrooms in the house. In 1995 the system was designed for three bedrooms, however, currently the dwelling has two other rooms that meet the criteria of a bedroom.

Mr. Canning outlined the history of building permits since the house was built in 1980 as a three-bedroom home. In 1994 there was a renovation that included two bedrooms upstairs, a den with a six-foot opening and a library with a six-foot opening. However the library opening was changed to a three-foot opening when they wanted to finish the basement to include a bedroom. In 1995 the Board of Health granted a variance to a three-bedroom home (two upstairs and one in the basement). In 2005, because of water damage, the Building Department issued a building permit to repair the damage. At that time the plan showed the den with a door as well as the two bedrooms upstairs and the bedroom in the basement (four bedrooms). In preparation for this current variance request, Mr. Ellis conducted a site visit and discovered that the den's six-foot cased opening had been reduced and had a door (five bedrooms). This most recent renovation had not been approved by the Building Department.

Board members discussed whether the Building Department is now aware of the change. They discussed the fact that the room was created illegally, and whether the Board should approve the variance considering that violation.

Mr. Canning read a letter of concern from Jim and Marila Sciarrello, abutters at 12 Orissa Drive. Their concerns included the sewer gas released from the vented leach field, damage to their property during construction, and that any damage would be remedied by the parties involved.

Board members further discussed that the repair in 2005 was approved by the Building Department and did not show the enclosed den; therefore, only three bedrooms are approved in this house. Only three bedrooms have been officially approved. They also discussed that the Heath's have been the only owners of the property and that they are responsible for any changes made to the dwelling.

Mr. Ellis noted that a previous septic system design in 1995 for a three-bedroom leach pit requiring variances was reviewed by the Board of Health at that time. He suggested that the bedroom in the basement might not have met the criteria of a bedroom at that time, thereby not increasing the number of bedrooms. He also explained that there is a set of French doors that close off the six-foot opening to the den. In ad-

dition the Town Assessor's records have this dwelling as a three-bedroom house. Mr. Ellis explained that the finished room in the walkout basement is used as a family room with windows facing the water. There is a full bathroom and several closets making it easy to use as a bedroom. Mr. Canning confirmed that the minutes in 2005 discussed that the finished basement room would be considered their third bedroom.

Mr. Ellis was asked to explain about the studio shown on the plan located at the water's edge. He explained that the studio is built on a crawl foundation with an open unfinished interior. There is electricity to the studio but no water.

It was suggested that the owners be made to return the house to its approved four bedrooms before it can be sold. The concerns of the abutter were also discussed further. Mr. Ellis explained that a charcoal filter on the vent eliminates any odors from the vent pipe.

**On a motion by Mrs. McKusick and seconded by Dr. Schneider, the Board of Health voted in the matter of 14 Orissa Drive, owner, Heath. This is a property where the septic system has failed and the house will be for sale. There is some confusion in the matter because the house was originally built as a three-bedroom house, and through permitted and unpermitted changes between 1980 and now, it has suddenly become a five-bedroom house where the septic system was designed for three. I move that we allow them to replace the system as designed by Jason Ellis on plans dated Revised July 14, 2012, design the system for a four-bedroom house, and require that the doors be removed from the library, rendering it a non-separated facility. This permit is contingent upon completion of that task. I further include that we include the 40 foot variance to the coastal bank. A four-bedroom deed restriction will be recorded for this property. The vote was 5-0-0.**

### **Agenda Item 3 – Approval Request – 17 Nauset Knolls Lane**

Mrs. Stephanie Sequin of Ryder & Wilcox, Inc. represented Erika and Kai Von Der Recke, owners of the property at 17 Nauset Knolls Lane. The 28,700 square foot lot currently has a two-bedroom dwelling and is for sale. Mrs. Sequin requested that the Board allow use of part of the private roadway as part of the land area to allow enough square footage for installation of a standard Title 5 septic system to replace the current cesspools. The property is elevated to avoid groundwater and there are no wetlands in close proximity.

Mr. Canning discussed the Nutrient Management Regulation that applies to this request.

Board members discussed whether the additional land could be included in the lot area to allow a third bedroom in the dwelling and installation of a standard Title 5 septic system. It was the consensus of the Board, based on previous discussion of similar requests, that the request could not be granted. However, the owner could have an I/A septic system installed to allow for a third bedroom.

**On a motion by Attorney Taylor and seconded by Mrs. Suraci, the Board of Health voted in the matter of 17 Nauset Knolls Land to deny this request so that we are consistent as to the measurement of lots. The vote was 5-0-0.**

### **Agenda Item 4 – Variance Request – 14 Country Crossing**

Mrs. Stephanie Sequin of Ryder & Wilcox, Inc. represented Wendy Ehrlich, owner of the property at 14 Country Crossing. Attorney Taylor recapped the previous hearing and the new request from the owner for placement of the fence surrounding her pool and the request for a variance to its distance from the pool apron.

Mr. Canning reiterated that it is a town by-law that specifies the distance allowed between a pool and the fence providing protection for the pool area. However, the Board of Health may grant variances to that by-law if appropriate. Mr. Canning further explained that the revised plans show the fence approximately

51 feet at its maximum distance from the pool, and 25 feet from the road side of the pool. The pool area is now separated from the dwelling to prevent entry to the pool directly from the house.

Mrs. Sequin added that previously the entire backyard was to be fenced allowing direct entry from the back of the house; that has been changed. Also a powered safety cover for the pool will be installed by the pool installer as required by State law. All gates will open outward and have self-closing latches.

Board members noted that there had been several changes to the plan in response to the Board's previous concerns. Attorney Taylor expressed concern that the homeowner could not see the entire fenced area from the house which prevents the homeowner from monitoring the safety of the whole pool area. Mrs. Sequin noted that the by-law addresses only that the fence must be no more than twenty feet from the pool apron, not whether or not it can be viewed from the house. Mrs. Sequin confirmed that the pool is already installed, as well as that the house and pool house are permanent structures. Mrs. McKusick suggested installing a motion-detected camera in the area or moving the fencing closer to the pool. Mrs. Sequin explained that the location of the pool equipment is of concern to the owner. Attorney Taylor further suggested a motion-detected alarm to make the homeowner aware of an intruder in the pool area.

Dr. Schneider brought up the fact that the by-law requires that the fence be no more than twenty feet from the pool apron and says nothing about visibility. He suggested that the owner be allowed to have the fence within the twenty feet allowed by the by-law or grant a variance for a small amount. Dr. Davis suggested granting a small variance with a contingency. Mrs. Suraci complimented the improvements to the plan.

Mrs. Sequin read an excerpt from the Board of Health minutes of December 2, 2010 of a similar situation. She read that one of the conditions of the variance approved was: *The owner must be able to view the fencing from all areas to determine that it is maintained, structurally sound, and protects the public health and safety.* She then read from the by-law Swimming Pool Fencing Requirements: *Every residential outdoor swimming pool shall be totally enclosed by fence or solid structure four feet in height, firmly secured to ground level with no opening, holes, or spaces larger than four inches in any direction. Such fence, including gates, shall not be less than four feet and any gate shall be made self-closing and be equipped with a self-closing safety latch. For the purposes of this paragraph, an exterior door of the dwelling house can be used in lieu of a gate when such dwelling house is used to satisfy the enclosure requirement of this by-law.*

There were no abutters present.

**On a motion by Dr. Schneider and seconded by Mrs. Suraci, the Board of Health voted in the matter of 14 Country Crossing to approve the plan as submitted, modified from the one we saw before even though the fence is in a broader area than we intended it to be and in the spirit of the regulation. Therefore, variances need to be granted to allow it to be more than twenty feet from the swimming pool recognizing that all of the other conditions, other than the distance from the swimming pool, have been met. We would make that contingent upon (1) that the pool be closed when it is not in use; and (2) that some safety device or camera be installed giving an additional modicum of safety so that should somebody be in the pool without the owners giving approval that they become aware of that fact. The variance is variable at various points to 51 feet, therefore a variance of 31 feet is granted. The vote was 4-1-0 with Attorney Taylor opposed.**

### **Agenda Item 5 – Approval Request – 3 Black Duck Lane**

Mr. Rick Judd represented Robert Patton, owner of the property at 3 Black Duck Lane. Mr. Judd reported on his February 20, 2012 inspection of the septic system on this property. He explained how he located the septic system components and noted that their location did not comply with the only record in the Health Department dated September 7, 1983. When the distribution box was replaced it was discovered that the septic piping was PVC Schedule 20. Nevertheless Mr. Judd had been able to inspect the piping from the distribution box to the leach pit without obstruction or compromise. He requested that the Board

of Health allow the Schedule 20 pipe to remain in place since the septic system is functioning as it should be.

Mr. Canning noted that any septic piping, other than cast iron pipe or Schedule 40 PVC pipe, must be approved by the Board of Health. He explained that this regulation had been written in response to the use of Orangeburg pipe in past years, and its tendency to be crushed or rotted; or clay pipe which becomes brittle. He suggested that in this case the PVC pipe would not deteriorate and it would be appropriate to allow the existing pipe to remain.

Board members inquired about the difference between Schedule 20 and Schedule 40 PVC pipe. Mr. Canning explained that Schedule 40 is thicker and more rigid but both are durable. Also inquired was the fact that the pipe is located beneath a stone driveway and how deep it is. Mr. Judd explained that the distribution box is H-20 rated and is 27 inches below the surface of the driveway and that the pipe itself is approximately three feet below the surface. He stated his confidence that the pipe and components are safe under the driveway.

**On a motion by Attorney Taylor and seconded by Dr. Schneider, the Board of Health voted in the matter of 3 Black Duck Lane to permit the pipe to stay. The vote was 5-0-0.**

#### **Agenda Item 6 – Approval Request – 18 Old Colony Way**

Mr. Keith Fernandes of J.M. O'Reilly and Associates, Inc. represented Capt'n Elmer's Fish Market owned by Elisa Costa and located at 18 Old Colony Way. Attorney Taylor noted that repair of the collapsed septic tank had been completed on an emergency basis and had been inspected by Mr. Canning.

**On a motion by Attorney Taylor and seconded by Mrs. McKusick, the Board of Health voted in the matter of Capt'n Elmer's Fish Market to grant the after-the-fact approval. The vote was 5-0-0.**

#### **Agenda Item 7 – Variance Request – 14 Lucy's Lane**

Ms. Judith Scanlon and Mr. Sigurd Winslow represented the Estate of Peter N. Winslow for this hearing. They requested an extension of the Order to Repair the septic system dated August 10, 2012 because of the existence of a converted cesspool. It will take about a year to decide what to do with the house.

Board members questioned if the water could be turned off to which Ms. Scanlon responded that it could but they would prefer not to while they clean out the house.

**On a motion by Dr. Schneider and seconded by Mrs. McKusick, the Board of Health voted in the matter of 14 Lucy's Lane that contingent on the house being unoccupied and the house water being turned off after December 1, 2012 we grant an extension of two years. The vote was 5-0-0.**

#### **Agenda Item 9 – Daniels Recycling Company, Inc.**

Dr. Davis excused herself from this hearing because she is an abutter to this property.

Mr. Canning distributed additional information to Board members (*Exhibit 9-1 and 9-2*).

Mr. Steve Daniels of Daniels Recycling Company, Inc. and Mr. Peter Flood of Green Seal Environmental were present at this hearing.

Mr. Canning introduced the purpose for this hearing. After reviewing several months of inspection reports for DRCI showing consistent overages in the amount of material in the building, the Board of Health requested a hearing with the management to discuss this and other issues.

Mr. Daniels submitted a copy of the 2011 Annual Report to Mr. Canning for the Health Department files.

Mr. Daniels referred to an inspection report dated June 26, 2012 and noted that it revealed an error in their FAM (Financial Assurance Mechanism) regulations. He discussed that DRCI had been keeping track of the tonnage of material and it seemed to be within all applications. After reviewing the inspection report

they noted the discrepancies between the amount of inbound tonnage and the outgoing volume. He acknowledged that the amount of C&D material stored in the building on June 26<sup>th</sup> exceeded the amount of volume allowed by the FAM. They keep a daily record of tonnage received and shipped out and they couldn't understand why the inspection report showed an increase in stored material. He noted that in order to reduce the amount of stored C&D material they shipped more than 800 tons to another facility for processing.

Mr. Daniels explained that they had never questioned the cubic yards to tons formula in the FAM. He further explained how he looked at previous records and calculated the cubic yards per ton of material delivered to DRCI. He noted that the FAM numbers are based on cost per clean-up, not related to actual tonnage or cubic yardage; therefore the difference in calculation has resulted in a large discrepancy over several years. He explained that it is impossible for him to operate under the restrictions placed on his business because of the disparity in numbers and types of material.

Mr. Daniels noted that DRCI must rewrite their FAM in the near future and he would like one of the Board members to be involved in the discussions with them to determine a formula that would eliminate the discrepancies between the numbers reported to FAM and the numbers determined during a Health Department inspection.

Board members discussed that staff at DRCI ought to be able to observe that the accumulated material inside the processing building is excessive. Mr. Daniels reiterated that they monitor the material by tonnage. Mr. Daniels was asked how long it would take to work out new FAM numbers. Mr. Flood responded that DRCI's Authorization to Operate Permit is expiring and as part of that process they will be renewing the FAM at that point also.

Mr. Flood explained that the FAM was originally based on a model that is no longer accurate because DRCI has gone from a C&D processing facility to a transfer station. He also noted that the FAM is not a permit, but is an assurance to DEP that if the facility no longer operates there would be sufficient funding to clean up the property. He further discussed the variables in the material in the waste stream depending on the economy. Overall DRCI would like to revise the FAM formula to reflect the actual tonnage and variable volume received at the facility on a given day in an effort to comply with the Site Assignment.

Board members discussed how these various materials affect the truck traffic in town. Mr. Daniels responded that several years ago the Board of Health allowed DRCI to increase the size of the trucks arriving and leaving the facility resulting in larger loads being transported out. An inquiry about the method being used by the Health Department to measure the volume of material in the building was answered by Ms. Erika Woods, Assistant Health Agent (also present) that she measures the length and width of the pile and estimates the height to obtain her amount of volume.

Mr. Daniels referred to his spreadsheet comparing the FAM allowances to the actual cubic yards per ton which resulted in average volume to weight of 3.2 times greater than the FAM. It was noted that the Board appreciates the effort Mr. Daniels has shown in his calculations that explain the discrepancy between the FAM allowances and the measurements taken by the Health Department.

Mr. Canning discussed what might be involved in education and working with DRCI to come to an understanding of how the FAM numbers are developed. Mr. Flood suggested that this discussion take place soon because DRCI will be applying for their Authorization to Operate during the fall.

Board members expressed their appreciation to Mr. Daniels and Mr. Flood for coming in to discuss these issues with the Board of Health and that they look forward to continuing a good working relationship with Daniels Recycling Company, Inc.

Dr. Davis returned to the meeting following the DRCI hearing.

## **Agenda Item 10 – Hearing – 3 Herring Brook Way**

Parties to this hearing included: Owner, Bank of America represented by Attorney Matthew Braucher (present); Former Owner, Mrs. Rathaus; Former Owner's Agent, Peggy Gabour (present); Tenant Melissa Sellew.

Mr. Canning explained that this hearing is in response to a housing correction order dated July 17, 2012. He further explained that there are conditions deemed to endanger present at 3 Herring Brook Way that should have been repaired within 24 hours. He read through a chronology of events since July 16, 2012 when the tenant in the apartment above the garage called to complain that her hot water had been shut off by the owner.

On July 16, 2012 the Health Department received a call from Melissa Sellew, the tenant occupying the garage apartment at 3 Herring Brook Road. Ms. Sellew stated that on July 15, 2012 she discovered that her hot water was shut off by the owner. She stated that there was also an issue with the propane tank, she and the owner (former owner) had an agreement that they would split the cost of filling the tank; however the former owner informed Ms. Sellew that she will not authorize the tank to be filled again.

July 16, 2012, the Health Department conducted an inspection of the apartment. At the time of the inspection the Health Department offered Ms. Sellew, as required by the Housing Code, a full inspection. Ms. Sellew stated that her concern is the hot water and declined the full inspection. Based on her decision the Health Department measured the hot water at 66°. Ms. Sellew also pointed out that the toilet handle sticks when flushed and must be jiggled to stop the water. In addition, as required by the code, the Health Department also checked to see if there were operating smoke detectors and carbon monoxide detectors. One smoke detector was missing and there were no carbon monoxide detectors in the apartment.

Immediately after the inspection the Health Department spoke with June Rathaus who stated that the property is now owned by Bank of America. Ms. Rathaus gave the Health Department the number of her attorney to obtain additional information on the ownership of the property.

On July 16, 2012 the Health Department called Atty. Seth Roman, who confirmed that Bank of America owns the property. Atty. Roman gave the Health Department the personal contact for the Bank. Also on July 16, 2012, the Health Department placed a call to Atty. Braucher and left him a message to call the Health Department.

On July 17, 2012 the Health Department spoke with Attorney Matthew Braucher who confirmed that he is the proper contact for the Bank on this matter. Atty. Braucher stated that he will speak to someone to have the smoke/CO detector and hot water addressed. Atty. Braucher informed the Health Department that both Ms. Rathaus and Ms. Sellew were, by written agreement, to vacate the property by August 30, 2012. Atty. Braucher requested that the Health Department mail the order to Bank of America and email a copy to his office.

On July 17, 2012 an order was issued to Bank of America National Association for the repair of the following:

- Lack of hot water
- Lack of smoke detectors
- Lack of carbon monoxide detectors
- Running toilet

The hot water, smoke and carbon monoxide detectors are defined by Chapter II as conditions deemed to endanger which require a good faith effort to be made within 24 hours of notification of the violation.

On August 8, 2012 the Health Department spoke with Peggy Gabour, agent for the owner, regarding the outstanding order. Ms. Gabour stated that she was denied access to the apartment by the tenant. The Health Department informed Ms. Gabour that they are attempting to arrange for a re-inspection of the premises; and if items have not been addressed they would call for a hearing before the Board of Health



to determine what action is necessary to secure compliance. Ms. Gabour stated that she checked the pipes at the hot water tank and they were hot.

On August 8, 2012 the Health Department conducted a re-inspection of the apartment. At the time of the inspection the hot water measured at 65° and the smoke/carbon monoxide detectors remained unchanged. The tenant stated that they have not had hot water for several weeks and are showering elsewhere. The Health Department also checked the pipes exiting the hot water tank which were cold. During the inspection Ms. Sellew was given an order notifying her of her obligation to allow access to the owner and his/her agents to make the necessary repairs.

On August 8, 2012 the Health Department issued notice of today's hearing. This notice was emailed to Atty. Braucher, sent Certified Mail RRR to the Bank of America National Association and hand delivered to Ms. Sellew.

On August 13, 2012 the Health Department, upon the request of Ms. Gabour, conducted an inspection at the property. At the time of the inspection the hot water heater and the hot water in the greenhouse was found to be 122°. The Health Department then conducted a re-inspection of the apartment with the tenant. At that time the hot water measured 120°. The smoke/carbon monoxide detectors and toilet handle remained unchanged.

As of today's hearing the smoke/carbon monoxide detectors (condition deemed to endanger) and the toilet handle remain in violation of the order dated July 17, 2012.

Mr. Canning noted that there is a difficult relationship between the former owner and the tenant concerning the hot water heater. It is his opinion that the hot water issue has been addressed, but the other violations have not.

Attorney Taylor addressed the issue of why the owner (Bank of America NA) had not seen to the replacement of the smoke and carbon monoxide detectors. Attorney Braucher responded that it is an issue between the tenant and Ms. Gabour and that he had urged Ms. Gabour to have the smoke and carbon monoxide detectors installed but she was prevented access to the apartment because of the presence of the tenant's dog. Attorney Braucher suggested that he could obtain a court order to allow access to the apartment to install the smoke and carbon monoxide detectors.

Dr. Schneider inquired about the court order that the tenants vacate the apartment by August 30, 2012 and how long the bank has owned the property. Attorney Braucher responded since June 30, 2010. He related that the tenant had been present in the apartment as a housekeeper to the former owner and before the bank took ownership. The tenant never had a lease or rental agreement with the bank.

Mr. Canning reiterated that the tenant had been issued an order on August 8, 2012 to allow access to the apartment to any representative of the owner to replace the smoke and carbon monoxide detectors as required following the Health Department inspection on July 17, 2012.

Ms. Gabour informed the Board that after the Health Department inspection on August 8, 2012 she posted notice to the tenant requesting access to the apartment on August 9, 2012. While she was still there the tenant's boyfriend became obnoxious toward Mrs. Rathaus and her grandson. He threatened bodily injury to Mrs. Rathaus' son if he came on the property. Ms. Gabour explained that this took place while she was preparing the main house for an estate sale for Mrs. Rathaus. The following Monday morning, at Ms. Gabour's request, Mr. Canning arrived for an unscheduled inspection and found that there was sufficient hot water. She also described additional obnoxious and fearful behavior that she had observed by the tenant's boyfriend toward Mrs. Rathaus and her pet dogs.

**On a motion by Attorney Taylor and seconded by Dr. Davis, the Board of Health voted in the matter of 3 Herring Brook Way that we had the hearing, which we had to have because of our requirements, and I propose that Bank of America have the two items that are missing, which are the carbon monoxide and smoke detectors installed by no later than September 15, 2011.**

Attorney Taylor amended his motion to say that the smoke detectors, carbon monoxide detectors, and toilet be repaired and installed. Dr. Davis seconded the amendment. The vote was 5-0-0.

### **Agenda Item 11 – Approve Minutes**

The minutes of the Board of Health meeting held on July 12, 2012 had previously been distributed to Board members for review and approval.

On a motion by Attorney Taylor and seconded by Mrs. Suraci, the Board of Health voted to approve the minutes of the meeting held on July 12, 2012 as presented. The vote was 5-0-0.

### **Agenda Item 8 – Discussion/Approval – Board of Health Regulations for the Sale and Use of Tobacco and Nicotine Delivery Products**

On a motion by Attorney Taylor and seconded by Mrs. McKusick, the Board of Health voted in the matter of the Town of Orleans Board of Health Regulations for the Sale and Use of Tobacco and Nicotine Delivery Products as modified by the State representatives and I would move that these become effective on January 1, 2013. That will give time for all of the local merchants that have tobacco products in their possession to get rid of them. The vote was 5-0-0.

### **Agenda Item 12 – Review Correspondence / Old and New Business**

12 – A – 1&2 – A letter dated August 3, 2012 from the Health Department to Attorney Christopher Ward regarding 33 Eli Rogers Road; and a letter dated July 20, 2012 from the Health Department to Mr. George Albert, owner of the property at 33 Eli Rogers Road had previously been distributed to Board members for review and discussion. Mr. Canning reported that at the owner's request the Health Department conducted an inspection. It was determined that there were many conditions that needed correction before the dwelling could be occupied.

12 – B – A letter dated July 28, 2011 from the Health Department to Jason Ellis regarding 23 Herring Brook Way had previously been distributed to Board members for review and discussion. Mr. Canning reported that because the installation took place during the time period between the last two meeting he requested that they determine the conditions to be placed on the installation and operation of the I/A system installed. He reviewed the variances previously granted.

On a motion by Mrs. McKusick and seconded by Dr. Schneider, the Board of Health voted in the matter of 23 Herring Brook Way. Conditions are to require monitoring of total coliform, TSS, BOD, and nitrogen until we know it is fine. The vote was 5-0-0.

At this point Mr. Canning discussed the permits in his Health Agent's Report so they could be heard by all Board members.

### **Agenda Item 13 – Health Agent's Report**

#### **Licensing/Permits**

#### **Temporary Food Permits**

#### **Ed Gill Memorial Run**

Ann Marie Gill has applied for a variance as needed for cooking outdoors, and for the menu. They do have a person with a Certified Food Protection Manager certificate. The event will be held on September 30, 2012 from 11:00 a.m. to 2:30 p.m. at the Odd Fellows Lodge on Namskaket Road. Hamburgers, hot dogs, clam chowder, raw oysters, littlenecks, and bottled water will be served. A raw bar will be provided by a licensed retail shellfish refrigerated truck manager. Shellfish will be shucked to order. Shellfish will be held on ice at a shucking table in small batches. Hamburgers and hot dogs will be cooked on



a gas grill and served to order. Chowder will be provided hot by Capt. Elmer's and will be held hot in chafing dishes. All serving items will be single use, and condiments will be in individual packets. Hand-washing facilities are available at the Odd Fellows Lodge and there will be a portable hand-washing station set up near the shellfish shucking area. Restrooms are in the Odd Fellow's and Fitness Revolution. Tongs, gloves, ladles, and spoons will be used for service. Bleach and water will be used to sanitize tables and coolers. All food service will be on the lawn area with a tent over the food service area.

**On a motion by Attorney Taylor and seconded by Dr. Schneider, the Board of Health voted in the matter of the Ed Gill Memorial Run to be held on September 30, 2012, to approve the request. The vote was 5-0-0.**

#### **Orleans Methodist Church**

Ellen Ehrhart had applied for a variance as needed for their menu and for cooking outdoors at the Chicken BBQ from 5:00 p.m. to 7:00 p.m. on the evenings of July 19, 2012 and August 16, 2012 at the Orleans Methodist Church. BBQ chicken, Cole slaw, potato salad, pre-packaged cookies and brownies, lemonade, and iced tea were served. The BBQ chicken was cooked on grills outdoors and held in sanitized, insulated units to be kept >140°F for service. Items were held at proper temperatures in the church kitchen until needed for service. Items were served indoors out of the church kitchen. Food was purchased from licensed sources (Stop & Shop/ Hyannis Food Service). Tongs and gloves were used to prevent bare-hand contact. Everything was single use articles. Restrooms and hand washing facilities were available inside the church.

#### **Dr. Frank N' Swine**

Frank Ferzoco served pulled pork, baked beans, chili, hot dogs, and bottled or canned water and soda at the Antique Show held on Saturday, August 4, 2012 from 10:00 a.m. to 4:00 p.m. The pulled pork, baked beans and chili were all cooked ahead of the event at the Universal Lodge kitchen and were held hot in insulated hot holding units. All food was from licensed sources. A hand washing station was set up and portable toilets were available. Only disposable items were used for customer service. A variance was needed for cooking outdoors and for the menu.

#### **Cape Cod Saltworks LLC**

Janice Burling had applied to change the name of her business from the previously approved Uncle Edgar's Farm for processing of previously-tested salt water to be dehydrated and made into salt.

**On a motion by Mrs. McKusick and seconded by Dr. Schneider, the Board of Health voted in the matter of the three previous variance requests to approve them. The vote was 5-0-0.**

Mrs. Suraci was excused from the meeting at this point and Mr. Canning continued with the Health Agent's Report.

#### **Bathing Beaches**

Permit applications for public bathing beaches for Nauset Beach, Skaket Beach, Crystal Lake, and Pilgrim Lake had previously been distributed to Board members. These are the four bathing beaches that the town proposes to license as formal bathing beaches.

Other beaches that were formally on the list for which the Health Department had not received an application include: Meeting House Pond, Pleasant Bay, Town Cove, Priscilla's Landing and Rock Harbor. The Board of Health has not received these applications because of potential conflicts with Title 323 Chapter 2.00, The Use of Vessels which prohibits the use of motorboats within 150 feet of shoreline which is being used as swimming area. All of these areas include boat landings.

Kent's Point and Paw Wah Point are properties under the jurisdiction of the Conservation Commission. At the present time the Commission does not consider these passive recreation areas as being bathing beaches and does not wish to post them as such. The Commission will look at the Management Plans for

these areas; if swimming is listed as one of the activities the Commission will amend the plans to drop this designation.

Bakers Pond is owned by the Commonwealth of Massachusetts. According to the Bathing Beach Regulations it falls under state jurisdiction.

**On a motion by Attorney Taylor and seconded by Dr. Schneider, the Board of Health voted to instruct Mr. Canning to write to the Bureau of Environmental Health and inform them that Orleans has four permitted bathing beaches. The vote was 4-0-0.**

### **Beach Closures**

On August 16, 2012 the Health Department received a call from the Barnstable County Laboratory informing them that Rock Harbor exceeded the bacteriological quality limits for a bathing beach. The Health Department posted the areas as being closed to swimming and re-samples were collected again on August 16, 2012.

On August 2, 2012 the Health Department received a call from the Barnstable County Laboratory informing them that Meetinghouse Pond exceeded the bacteriological quality limits for a bathing beach. The Health Department posted the area as being closed to swimming. The water was re-sampled on August 2, 2012 and reopened on August 3, 2012 upon confirmation that the water quality standards had been met.

In each of these events there was a rain event preceding the initial sampling.

### **Large System Upgrades**

The Health Department is in receipt of two proposed large system upgrades in Orleans at Rock Harbor Village and Tonset Woods.

**Rock Harbor Village** is an existing housing complex at 9 Main Street. It consists of six buildings with a total of 120 bedrooms and a multi-function room/management office with a total daily sewage flow of 14,123 gallons per day. Because the daily flow is between 10,000 gpd and 15,000 gpd it is considered a large system. However, it is regulated by the state under the provisions of Title 5; it is not subject to a ground water discharge permit. The system consists of an existing 4,000 gallon septic tank at each of the five residential buildings and, a 1500 gallon septic tank serving the Community Building. They will be installing two new 11,000 gallon septic tanks. An Advantex treatment system is proposed is designed to meet secondary treatment standards of 30mg/L BOD, 30mg/L TSS and 19 ppm Total Nitrogen. A 15,000 gallon recirculation tank, two duplex pumping systems, four Advantex AX100 pods are being installed, and the effluent will be pumped to four pressure dosed leaching systems.

Board members noted that this is a privately-owned condominium complex and it was known that their septic system had not been operating properly and would need to be upgraded in the near future. It was also noted that some of the housing units are considered affordable housing units.

**Tonset Woods/Avelar Circle** consists of housing units owned by the Orleans Housing Authority at 94 Hopkins Lane. The property consists of 30 bedrooms, 100 housing-for-the-elderly units and a community/office building. The total daily sewage flow from the site is 18,500 gallons per day. Because the flow is greater than 15,000 gpd it requires a Groundwater Discharge Permit. The wastewater treatment facility consists of a sewer collection system, a 27,000 gallon Anoxic Equalization Tank, an Amphidrome Plus Treatment System, two Clearwell Tanks, Chemical Control Building and two infiltrator subsurface discharge beds. The draft Groundwater Discharge Permit calls for a discharge of 30mg/L TSS, 30mg/L BOD and Total Nitrogen of 10mg/L.

### **Nutrient Management Regulations**

Mr. Canning addressed the issue of allowing someone to add a third bedroom with I/A technology with 20,000 square feet or more. He explained that this type of variance has no expiration date and could be carried indefinitely by the owner as opposed to variances in Title 5 have an expiration of one year from

the date of issuance. He suggested amending the Regulations or adding an expiration date as a condition of a variance.

### **Agenda Item 12 – Review Correspondence / Old and New Business (Cont'd.)**

12 – C – 1 & 2 – Finbars Landing Waste Disposal Procedures and a letter from the Orleans Health Department dated July 18, 2012 to the owners of Finbars Landing had previously been distributed to Board members for review and discussion. Mr. Canning reported that the Town of Eastham had filed a complaint that someone at Finbars had been disposing of food and wastewater down a catch basin on Old County Road. It was noted that employees must leave the property to deliver the waste to the catch basin. Mr. Canning issued a cease and desist order and required that they write the specific Waste Disposal Procedures.

12 – D – 1 & 2 – A memo from the Health Agent to the Town Administrator dated July 19, 2012 regarding Bathing Beaches, and the bathing beach applications (4) had previously been distributed to Board members for review and discussion. These had been discussed as part of the Health Agent's Report.

12 – E – A memo from Peter Budryk of 4A Seaview Road dated July 31, 2012 had previously been distributed to Board members for review and discussion. Mr. Canning explained Mr. Budryk's request for an extension of two years to have his septic system inspected in order be in sync with the other condominium owners.

**On a motion by Attorney Taylor and seconded by Dr. Schneider, the Board of Health voted in the matter of 4A Seaview Road that we grant him time to get in sync with the other owners so that next time the other owners have their systems inspected and pay for it that he have his system inspected and pays for it. I'm not going to put two years on it, I'm going to put the next time the owners that have already had their systems inspected are required to do it again, whether that is tomorrow or eighteen months from now. He either does it with them or he has to do it by himself.**

Board members inquired when the septic system was last inspected to which Mr. Canning responded it has been about four years. He further explained that if it were a single family home Mr. Budryk would only be required to have his septic system inspected at the time of a sale. Being in condominium ownership he is required to have it inspected every three years.

**The vote was 4-0-0.**

12 – F – The Permit Extension Act, Updated August 8, 2012, Frequently Asked Questions had previously been distributed to Board members for review and discussion. Mr. Canning explained that the Permit Extension Act affects those with outstanding permits and how the Nutrient Management Regulations are applied. The extension has been revised to four years and the tolling period has been extended to August 15, 2012.

12 – G – The Orleans, Brewster, Eastham Groundwater Protection District Board of Managers Meeting minutes of July 11, 2012 had previously been distributed to Board members for review and discussion.

12 – H – Inspection Reports from GHD for the Town of Orleans Transfer Station dated July 12, 2012, and the Summary of Quarterly Gas Sampling Results dated July 26, 2012 had previously been distributed to Board members for review and discussion. Mr. Canning reported that they found one well with a high reading of methane but there was no health risk present in nearby catch basins and buildings.

### **ABBA Restaurant**

Christina Bradford, owner of the ABBA Restaurant has requested additional time to renew their Serve Safe Certifications. Their Certified Food Protection Manager expires this month and they would like to continue through the summer season before starting renewal applications.

On a motion by Dr. Davis and seconded by Attorney Taylor, the Board of Health voted to grant a ninety day extension for renewal of the Serve Safe Certifications for ABBA Restaurant. The vote was 4-0-0.

**Agenda Item 14 – Adjournment**

On a motion by Mrs. McKusick and seconded by Dr. Schneider, the Board of Health voted to adjourn this meeting at 4:09 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.

\_\_\_\_\_  
Elizabeth Suraci, Vice Chair

  
\_\_\_\_\_  
Robin K. Davis, Ph. D.  
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Augusta F. McKusick  
\_\_\_\_\_  
Date Approved/Accepted

**DOCUMENTS PROVIDED FOR THE August 16, 2012  
MEETING OF THE ORLEANS BOARD OF HEALTH**

**Agenda Item 2 – Variance Request – 14 Orissa Drive**

- 2 – 1 – Variance Application by J.C. Ellis Design Company, Inc.
- 2 – 2 – Letter from Jim and Marila Sciarrello (abutters) regarding variance request.

**Agenda Item 3 – Approval Request – 17 Nauset Knolls Lane**

- 3 – 1 – Request for Meeting by Ryder & Wilcox Engineering
- 3 – 2 – Proposed On-Site Sewage Treatment and Disposal System plan by Ryder & Wilcox dated June 20, 2012
- 3 – 3 – Excerpts from Town of Orleans Nutrient Management Regulations

**Agenda Item 4 – Variance Request – 14 Country Crossing**

- 4 – 1 – Letter from Ryder & Wilcox dated August 3, 2012
- 4 – 2 – Landscape & Pools plan by Crossroads dated Revisions 7/28/12
- 4 – 3 – OHD letter dated July 24, 2012 to Ms. Judy Bersin, Ryder & Wilcox Engineering

**Agenda Item 5 – Approval Request – 3 Black Duck Lane**

- 5 – 1 – Letter dated July 31, 2012 from Richard Judd, R.S.

**Agenda Item 6 – Approval Request – 18 Old Colony Way**

- 6 – 1 – Letter from J.M. O'Reilly & Associates, Inc. dated July 20, 2012
- 6 – 2 – Photographs dated July 16, 2012
- 6 – 3 – Application for Disposal System Construction Permit dated July 16, 2012

**Agenda Item 7 – Hearing Request – 14 Lucy's Lane**

- 7 – 1 – Letter dated August 10, 2012 from Sigurd Winslow and Judith Scanlon
- 7 – 2 – Letter from OHD dated August 10, 2012 to The Estate of Peter N. Winslow

**Agenda Item 8 – Discussion/Approval – Town of Orleans, Board of Health, Regulations Prohibiting Smoking in Workplaces and Public Places and Regulations for the Sale and Use of Tobacco and Nicotine Delivery Products**

- 8 – 1 – Town of Orleans, Board of Health, Regulations Prohibiting Smoking in Workplaces and Public Places and Regulations for the Sale and Use of Tobacco and Nicotine Delivery Products (with edits)
- 8 – 2 – Letter dated July 10, 2012 from Retailers Association of Massachusetts
- 8 – 3 – Letter dated July 12, 2012 from New England Convenience Store Association
- 8 – 4 – Letter dated July 11, 2012 from Cumberland Farms

**Agenda Item 9 – Hearing – Daniels Recycling Company, Inc.**

- 9 – 1 – OHD letter dated August 3, 2012
- 9 – 2 – OHD Memo to File dated August 13, 2012
- 9 – 3 – OHD Memo to File dated July 30, 2012
- 9 – 4 – OHD letter dated July 3, 2012
- 9 – 5 – Letter from Town Counsel dated March 17, 2008
- Exhibit 9 – 1 – DRCI letter dated August 16, 2012
- Exhibit 9 – 2 – Calculations prepared by DRCI and distributed during the meeting

**Agenda Item 10 – Hearing – 3 Herring Brook Way**

- 10 – 1 – OHD letter dated August 8, 2012 to Bank of America, NA – Notice of Hearing
- 10 – 2 – OHD letter dated July 17, 2012 to Bank of America, NA – Inspection Report
- 10 – 3 – OHD letter dated August 8, 2012 to Melissa Sellev, Tenant
- 10 – 4 – Complaint Detail Report dated July 16, 2012

**Agenda Item 11 – Approve Minutes**

- 11 – 1 – OBOH Minutes of Meeting held on July 12, 2012

**Agenda Item 12 – Review Correspondence / Old-New Business**

- 12 – A-1 – OHD letter dated August 3, 2012 to Atty. Christopher Ward re: 33 Eli Rogers Road
- 12 – A-2 – OHD letter dated July 20, 2012 to Mr. George Albert re: 33 Eli Rogers Road
- 12 – B – OHD letter dated July 28, 2011 to Jason Ellis re: 23 Herring Brook Way
- 12 – C-1 – Finbar's Landing Waste Disposal Procedures
- 12 – C-2 OHD letter dated July 18, 2012 to owners of Finbar's Landing
- 12 – D-1 – OHD memo dated July 19, 2012 to Town Administrator
- 12 – D-2 – Four Applications for Permit to Operate a Bathing Beach
- 12 – E – Letter dated July 31, 2012 from Peter Budryk to OHD re: 4A Seaview Road

12 – F – The Permit Extension Act Updated August 8, 2012 – Frequently Asked Questions  
12 – G-1 – Orleans, Brewster, Eastham Groundwater Protection District Board of Mgrs. Meeting minutes of July 11, 2012  
12 – G-2 – Orleans, Brewster, Eastham Groundwater Protection District Board of Mgrs. Meeting minutes of June 13, 2012  
12 – H – Inspection Reports from GHD for the Town of Orleans Transfer Station dated July 12, 2012, and the Summary of Quarterly Gas Sampling Results dated July 26, 2012

**Agenda Item 13 – Health Agent's Report**

13 – A – Horsley Witten Group – Wastewater System Upgrade Application dated August 1, 2012 for Rock Harbor Village  
13 – B-1 – GCG Associates, Inc. – Sewage Treatment Facility Project dated April 2012 for Tonset Woods and John Avellar Circle  
13 – B-2 – MDEP letter dated July 12, 2012 permit for Tonset Woods and John Avellar Circle Groundwater Discharge Permit