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

October 18, 2012

The Board of Health convened its meeting at 2:04 p.m. on Thursday, October 18, 2012 in the Skaket Meeting Room of the Orleans Town Hall.

Present: Chairman Job Taylor, III, Vice Chair Elizabeth Suraci, Augusta McKusick, and Robin Davis, Ph. D.  
Also present: Health Agent Robert Canning and Selectmen Liaison Susan Christie.

Excused: Jan Schneider, M.D.

### **Agenda Item 2 – Variance Request – 11 Snow Shore Road**

Mrs. Portia Calouro, owner of the property at 11 Snow Shore Road was present for this hearing. After recently purchasing this property she investigated the septic system which was installed in 1951 for a four-bedroom house. Two of the upstairs bedrooms have ceiling heights of six feet, eight inches (6'8"); both less than the seven foot (7') height required by Chapter 2. In addition, the previous owner added a floor over a cement floor in the living room which resulted in a reduced ceiling height of six feet, eleven inches (6'11").

Mr. Canning explained that there are twelve (12) finished rooms in the dwelling. According to Title 5, the calculation of the twelve rooms is divided by two to arrive at six bedrooms, or a flow of 660 gallons per day of septage. Of the twelve, four did not have adequate ceiling height (office space, living room, and two third-floor bedrooms). Per Chapter II those rooms need a seven foot (7') ceiling height. Reviewing the situation under the Board of Health Regulations, there are four bedrooms. If the variance is granted to allow the two bedrooms on the third floor to be classified as bedrooms, there are six bedrooms in the dwelling; and if the ceiling heights of the office and living room are approved it would make them habitable rooms.

Board members inquired about the size of the lot. Mrs. Calouro indicated that it is over an acre. It was suggested to vary only the two bedrooms on the third floor and require a deed restriction for a six-bedroom dwelling. In response to a request Mr. Canning explained that the owner plans to replace the current septic system.

There were no abutters present.

**On a motion by Attorney Taylor and seconded by Dr. Davis, the Board of Health voted in the matter of 11 Snow Shore Road, to approve the request for a variance.**

There was discussion regarding a deed restriction.

**Attorney Taylor modified his motion, seconded by Dr. Davis: That a request for a variance for six bedrooms is granted, and that a deed restriction be recorded. The vote was 4-0-0.**

### **Agenda Item 3 – Hearing Request - 11 Old Farm Lane**

Mrs. Judy Bersin of Ryder & Wilcox Engineering, Inc. represented Peter (also present) and Melissa Brown, owners of the property at 11 Old Farm Lane. Mrs. Bersin explained that there is a cesspool which must be replaced. The dwelling has nine rooms, and four bedrooms are being used as bedrooms. There is an unheated sunroom that does not have forty percent glazing so it is not considered a sunroom. She requested that the Board determine that the sunroom is not a bedroom which would allow installation of a four-bedroom septic system of 440 gallons per day. Mrs. Bersin described other aspects of the sunroom that would prevent it from meeting the criteria of a bedroom. In addition, the Assessor's Card lists the room as an enclosed porch.

Mr. Canning explained that the Board of Health regulations state that an enclosed porch is a bedroom unless it exceeds forty percent glazing. The room is weather-tight; therefore it would be considered a bedroom. If the Board determines it is not a bedroom it must be confirmed that it has never been used as a bedroom.

Board members questioned the calculation of forty percent glazing. Mr. Brown explained that the sunroom is not heated, has a brick floor, and would not be able to have electrical wiring that meets code.

**On a motion by Mrs. McKusick and seconded by Mrs. Suraci, the Board of Health voted in the matter of 11 Old Farm Lane concerning their request to have this determined to be a four-bedroom home. In question is a sunroom, and although it does not meet glazing, it is essentially transparent on three sides with glass doors into the dining room. That should not be considered a bedroom in total bedroom count; therefore there are two bedrooms on the second floor and two bedrooms on the first floor. There should be a deed restriction to that effect. Finding: The area in question has never been used as a bedroom. The vote was 4-0-0.**

### **Agenda Item 5 – Hearing Request – 310 South Orleans Road**

Mr. John Clark, Trustee, represented the Golden Eagle Condominiums located at 310 South Orleans Road.

Attorney Taylor noted that the Order to Repair the septic system at the Golden Eagle Condominiums has been extended numerous times since it was issued in 2001.

Mr. Clark explained that they have their engineering plans in place and have \$94,000 in a septic fund escrow account. He again, requested an extension of the order pending determination by the town regarding a sewer system.

Mr. Canning explained that this is a request for extension for repair of the condominium septic systems. Originally the Board of Health asked that they consider a combined system with nutrient removal. The owners have a plan with an I/A system to remove nitrogen. The property has a few Title 5 systems as well as some cesspools. The existing systems are not in hydraulic failure and are structurally sound. He suggested having the plans reviewed and filed with the Health Department to ensure they are up to date and meet the current code.

Mrs. McKusick noted that this is a perfect opportunity to observe the good will of the Board and the community of homeowners who realize they have to do something about but have not had a problem with their septic systems. As it is unclear what direction the town is taking, it seems appropriate to grant the requested extension as long as the condominium board agrees to have their plans reviewed by the Health Department.

**On a motion by Mrs. McKusick and seconded by Dr. Davis, the Board of Health voted in the matter of the Golden Eagle Condominiums who have been under a three-year inspection because of the fact they are a condominium complex, we extend the order to repair their systems for two more years until December 31, 2014. I would condition that the current plans that they have contracted with J.M. O'Reilly & Associates be submitted to the Health Department and reviewed for consistency with the current regulations, but they need not apply for a permit at this time. Condition that if there is a hydraulic failure they would need to proceed with the repair. The vote was 4-0-0.**

### **Agenda Item 6 – Hearing Request – 8 Windswept Lane**

Mr. Canning explained that Mr. Scheibel had requested a determination of the total number of bedrooms in his home at 8 Windswept Lane. In 2004 the Health Department approved a Building Permit for construction of a four-bedroom house. Reviewing an Inspection on Sale of Property report it was noted that there are two finished rooms in the basement. The Health Department file showed that there were not to be any finished rooms off the main room in the basement. Upon inspection, the Health Department found eleven finished rooms; four rooms on the main floor (two bedrooms, a living room, and a kitchen/dining room) as well as a screened porch; four rooms on the second floor (two bedrooms, a tower room and a study); and three habitable rooms in the basement (a family room, sewing room, and exercise room). Mr. Canning described the criteria used in Title 5 and the Or-

leans Board of Health regulations, and explained the different calculations used in both regulations. Considering the rooms in the basement, the family room would not be considered a bedroom because of the hall off of it. The exercise room has a four foot, ten inch (4'10") opening off the hall. The sewing room, located at the end of the hall, has a four foot, seven inch (4'7") opening. On the second floor the tower room didn't have a six foot (6') opening as shown on the original plan; it was three foot, ten inches (3'10") on an angle that prevents one from a good view of the room from the study. Using the Board of Health regulations there would be seven bedrooms in the dwelling. According to Title 5, there would be five bedrooms in the dwelling.

Mr. Steve Scheibel, owner of the property at 8 Windswept Lane, was present for this hearing. He explained that the house was designed in 2003 to have open space with lots of windows and views. The tower room gave great views of the area, and is considered an extension of the study. It has windows on six sides and an open railing at the stairs which prevents it from being secluded from the study; therefore, no privacy for use as a bedroom. Mr. Canning explained that the marked-up plans showed a six foot opening with no rail.

Board members discussed a six foot opening to the tower room and exercise room and were concerned about the habitable rooms in the basement. Mr. Scheibel noted that the lot size is 48,000 square feet. It was suggested that the Board determine that there are six bedrooms, (two on the main floor, two on the second floor, and two in the basement), and that a deed restriction should be required that the tower room could never be used as a bedroom.

Mr. Canning explained that the large room in the basement is the only way to get to the other two rooms. The exercise room has a four-foot, seven-inch (4'7") cased opening and also has an oil boiler in the closet. Further down the hallway is the sewing room with a four-foot, seven-inch (4'7") opening which meets criteria as a bedroom. The Health Department would consider this a seven-bedroom dwelling. However, the Board of Health could require a deed restriction that this is a four-bedroom dwelling in which the tower room, sewing room, and exercise room would not to be considered as bedrooms and would have to be described and advertised as such. Board members continued to discuss the issue that the tower room could be used as a bedroom. It was noted that there is no door from the study to the tower room; it seems to be an elevated extension of the study.

**Mrs. McKusick made a motion in the matter of 8 Windswept Lane; I move that in making a bedroom determination for this dwelling, we make the following determination. First, the lower level of the house called the Lower Level with a family room, an exercise room, and a sewing room, because of traffic patterns, light and ventilation, and openings it has two habitable rooms that could be used for bedrooms. On the second floor I move that there are two habitable spaces that could be used as bedrooms; and there is a room called a tower room that has never been used as a bedroom and shall not be deemed a bedroom. On the main floor there are two rooms that could be deemed as a bedroom. Therefore it is a six-bedroom home and a deed restriction shall be put in place reflecting that.**

Mr. Canning pointed out that the home was designed as a four-bedroom dwelling and the septic system installed to accommodate four bedrooms. Discussion about the size of the septic system compared to the determined number of bedrooms. Mr. Canning agreed if the two rooms in the basement are opened up to six-foot openings, they could not be determined as bedrooms.

Mrs. McKusick withdrew her motion.

Mr. Canning suggested a finding that the tower room is not a bedroom based on configuration. The exercise room will be modified to have a six-foot opening, and the Board could condition that the sewing room cannot be used as a bedroom or be advertised as a bedroom. A deed restriction shall be filed at the Registry of Deeds for a four-bedroom dwelling.

**On a motion by Dr. Davis and seconded by Mrs. Suraci, the Board of Health voted in the matter of 8 Windswept Lane to accept the suggestion of the Health Agent to establish it as a four-bedroom home. The vote was 4-0-0.**

### **Agenda Item 7 – Approve Minutes**

The minutes of the Board of Health meeting held on October 4, 2012 had previously been distributed to Board members for review and approval. There were not sufficient Board members present to approve these minutes.

### **Agenda Item 4 – Approval Request - 16 Blake Lane**

Mr. Keith Fernandes of J.M. O'Reilly & Associates represented Bruce Wolf, owner of the property at 16 Blake Lane. During the septic inspection he found that the distribution box needs to be repaired. However, the current piping to and from the distribution box is Schedule 20. He would like to replace the distribution box using Schedule 20 pipe similar to the existing piping. During the inspection he conducted a water test and found that the water ran successfully to all components of the system.

Mr. Canning explained the use of Orangeburg pipe and clay pipe and the problems experienced when trying to connect new pipe or components to them. He explained that there is a coupling which allows joining Schedule 40 pipe to Schedule 20 pipe. He urged establishment of a policy to allow approval by the Health Department of similar situations without having the issue come before the Board of Health.

**On a motion by Attorney Taylor and seconded by Mrs. Suraci, the Board of Health voted in the matter of 16 Blake Lane approve the request to connect a new distribution box with Schedule 40 PVC pipe to existing Schedule 20 PVC pipe. Also request that the Health Department draft a policy to allow them to approve connection of two different sized PVC pipes without Board approval as long as the existing pipes are structurally sound. The vote was 4-0-0.**

### **Agenda Item 8 – Review Correspondence / Old and New Business**

8 – 1 – A Survey of I/A Technology Systems prepared by the Health Department had previously been distributed to Board members for review and discussion. Mr. Canning noted that some properties are meeting requirements, and some are not. Two years ago he wrote to those not meeting requirements and had several responses. It was suggested that the Board compare this report with the previous and discuss the results.

**Attorney Taylor made a motion regarding the Survey of I/A Technology Systems that anybody on this list that isn't doing well, and if you're supposed to check every quarter, and if they were on the bad list two years ago we write them a letter if they are on the list this year. There is a large group not testing at all, and they are way over the limit on their numbers.**

Mrs. McKusick noted that she and Mr. Canning had compared the two years, and developed a list of super offenders and offenders. The Board might decide whether a show cause hearing for super offenders would be advisable.

Attorney Taylor withdrew his motion.

A Board member inquired if there is a summary of the data for review. Mr. Canning explained that he has a summary sheet but it is somewhat difficult to compare for several reasons. Some inspectors are not recording their results in the Carmody database. Other property owners have their system inspected and sampled and the results are four times what they should be but the inspector isn't telling them or they are ignoring the information. Board members inquired if a system can be fixed if it is out of compliance. Mr. Canning explained that there are remedies depending on what is needed. The homeowner must be educated to make their system work properly.

8 – 2 – A Center of Town Septic System Analysis had previously been distributed to Board members for review and discussion. Mr. Canning distributed a revised report (*Exhibit 8-2-1*) and explained that this revision is comparable to the information collected by Weston & Simpson. He noted that Phase 1 of the Comprehensive Wastewater Management Plan is the "center of town". There are approximately 330 properties listed using the same criteria used by Weston & Simpson for their comparison between a step sewer system and a gravity sewer system. Mr. Canning noted that in addition to the Weston & Simpson information he included a description of the soil absorption system as well as the daily flow and facility type and other information. Of the 330 properties,

31 are vacant lots, 35 are served by cesspools, 38 are served by tank and soil absorption system, 114 are 1978 Code Title 5 systems, 107 are 1995 Code Title 5 systems, 3 are holding tanks, and 2 are unknown.

Mrs. McKusick noted that this is a spin-off of the Weston & Sampson report, and the recent request by some of the selectmen to discover what septic systems are in the ground in the Phase 1 area of the CWMP. Now there is a request for the same information for Phase 1A and Phase 2 (Meetinghouse Pond area). She commended the Health Department for their efforts and requested that a copy be sent to the Water & Sewer Commissioners for their information. She also asked that John Meyer be invited to come to a meeting to discuss this information and discuss concerns that an existing 1000 gallon tank could not be used in the Step System. Because of the work expended by the Health Department in developing and reviewing this information, the Board of Health should make a recommendation to the Board of Selectmen. Mrs. McKusick also requested a pie chart showing the number of 1000 gallon tank systems, and all systems installed before 2006.

Mr. Canning noted that in their report Weston & Simpson would eliminate all 1978 Code systems consisting of 1000 gallon tanks and cesspools. The septic system types installed prior to 1995, such as 1978 Code tank and soil absorption system, cesspools, and unknowns, make up 63% of the systems in the center of town not including the vacant land. Considering the size of tanks in the center of town, there are 99 tanks out of 299 that are less than 1500 gallons and there are nine tanks of unknown size.

8 – 3 – A Request for a Waiver in Locating Components for 28 Countryside Drive had previously been distributed to Board members for review and discussion. Mr. Canning reported that David Quinn, the inspector, requested a waiver to inspection of the distribution box because it could not be exposed due to wiring traversing that area. The flow through the system is adequate and uninterrupted.

**On a motion by Mrs. McKusick and seconded by Attorney Taylor, the Board of Health voted in the matter of 28 Countryside Drive to grant a waiver for inspection of the distribution box. The vote was 4-0-0.**

8 – 4 – A letter dated October 2, 2012 from the Health Agent to DRCI regarding the use of septic system additives had previously been distributed to Board members for review and discussion. Mr. Canning reported that the property owner came to the Health Department requesting information about his septic system at 95B Namequoit Road. The letter reminds Daniels that additives are not allowed to be used without prior Board of Health approval.

8 – 5 – An information sheet from the USDA regarding the Cape Cod Oral Rabies Vaccination Project had previously been distributed to Board members for review and discussion. Mr. Canning reported that this will take place shortly.

8 – 6 – The Orleans, Brewster, Eastham Board of Managers Meeting Minutes of August 8, 2012 had previously been distributed to Board members for review and discussion.

## **Agenda Item 9 – Health Agent's Report**

### **Water Quality at Uncle Harvey's Pond**

Mr. Canning reported that Uncle Harvey's Pond had been posted for No Activity at the pond because of excessive algae. He explained that the pond will continue to be posted until two samples are tested and result in readings of less than 70,000 ml. The cooler weather has helped the water to clear.

### **31 Namskaket Road – Habitat for Humanity**

The Health Department had received notification from the Board of Appeals stating that Habitat for Humanity had applied for a Comprehensive Permit for Chapter 40B (Affordable Housing) to allow the Zoning Board of Appeals to act on all waivers to local regulations. Regarding the local Board of Health regulations in Orleans including the Nutrient Management Regulations, they propose having 16 bedrooms, each lot having a ratio greater than 110 gallons per 10,000 square feet. However, taking into consideration the aggregate area (excluding the driveways) the flow would be less than 110 gallons per 10,000 square feet. The Board of Appeals also granted a waiver to Lot 1 (main house) to not being compliant with the Nutrient Management Regulations, as well as to the

Board of Health disposal regulations requiring all subdivisions having five building lots or more to have a community septic system with nitrogen removal technology resulting in 10 ppm or less.

### **Agenda Item 1 – Public or Press (delayed)**

#### **Nauset Farms**

Mr. Frank Barbato requested a variance for cooking outside at Nauset Farms for an Oktoberfest on Saturday, October 27, 2012 from noon to 7:00 p.m. He would be serving hamburger, sausage, chicken, steak, bottled water and sodas. All items will be cooked on a grill outside and served in a tent-covered area. Items will be brought out a few at a time from the establishment. Any cold holding outside will be in coolers with ice packs. Condiments will be in squeeze bottles. Disposable paper products will be used for service. Leftovers will be discarded. Hand-washing and restrooms are available inside the Food Establishment.

The Health Department became aware of this request on October 17, 2012. Because this request for a permit was not included on the agenda the Board must determine whether the request can be considered at this meeting. Board members agreed that it would be appropriate to proceed.

**On a motion by Attorney Taylor and seconded by Dr. Davis, the Board of Health voted in the matter of Nauset Farms to grant permission for the Oktoberfest. The vote was 4-0-0.**

Mr. Barbato introduced himself as the new general manager at Nauset Farms since early September. He hopes to bring the business up to a higher standard and become part of the community. He will have a calendar of future events.

### **Agenda Item 10 – Adjournment**

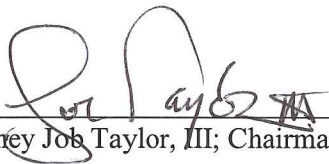
**On a motion by Attorney Taylor and seconded by Mrs. McKusick, the Board of Health voted to adjourn this meeting at 3:27 p.m. The vote was 4 -0-0.**

Respectfully submitted,

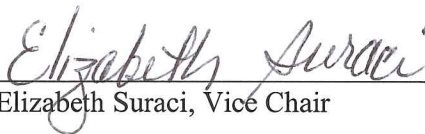


Lynda M. Burwell, Board Secretary

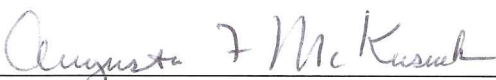
### **ORLEANS BOARD OF HEALTH**



Attorney Job Taylor, III; Chairman



Elizabeth Suraci, Vice Chair



Augusta F. McKusick

Excused

Jan Schneider, M.D.

Robin K. Davis, Ph. D.

November 1, 2012  
Date Approved/Accepted

**DOCUMENTS PROVIDED FOR THE October 18, 2012  
MEETING OF THE ORLEANS BOARD OF HEALTH**

**Agenda Item 2 – Variance Request – 11 Snow Shore Road**

- 2 – 1 – Letter dated October 3, 2012 from Portia Calouro, owner.
- 2 – 2 – Photographs of the interior of the dwelling
- 2 – 3 – OHD Memo to File dated October 1, 2012 regarding the bedroom determination

**Agenda Item 3 – Hearing Request – 11 Old Farm Lane**

- 3 – 1 – Request for Hearing prepared by Ryder & Wilcox Engineering, Inc.

**Agenda Item 4 – Approval Request – 16 Blake Lane**

- 4 – 1 – Letter from J.M. O'Reilly & Associates requesting a hearing
- 4 – 2 – Excerpt from the Orleans Board of Health Subsurface Sewage Disposal Regulations

**Agenda Item 5 – Hearing Request – 310 South Orleans Road**

- 5 – 1 – Request for Hearing letter from John Clark, Trustee, Golden Eagle Condominiums
- 5 – 2 – OHD Letter dated June 11, 2010 to the Condominium Owners
- 5 – 3 – OHD Letter dated July 23, 2012 to the Condominium Owners

**Agenda Item 6 – Hearing Request – 8 Windswept Lane**

- 6 – 1 – Letter from Debra and Steve Scheibel dated October 15, 2012
- 6 – 2 – OHD Letter dated October 15, 2012 regarding SDS Inspection Report
- 6 – 3 – OHD Memo to File dated October 15, 2012
- 6 – 4 – Ryder & Wilcox letter dated February 25, 2004
- 6 – 5 – OHD File record dated March 2, 2004
- 6 – 6 – Photographs of the interior of the dwelling taken October 15, 2012

**Agenda Item 7 – Approve Minutes**

- 7 – 1 – OBOH Minutes of Meeting held on October 4, 2012

**Agenda Item 8 – Review Correspondence / Old-New Business**

- 8 – 1 – July 2010 – July 2012 I/A Technologies Two Year Summary
- 8 – 2 – Phase 1 Summary of Septic Systems (2012)
- Exhibit 8-2-1 – Revised Center of Town Septic System Analysis
- 8 – 3 – Request for Waiver Difficulty in Locating Components – 28 Countryside Drive
- 8 – 4 – OHD letter dated October 2, 2012 to Daniels Recycling Company re: 85 Namequoit Road
- 8 – 5 – USDA Information Sheet re: Cape Cod Oral Rabies Vaccination Project
- 8 – 6 – Orleans, Brewster, Eastham Groundwater Protection District Board of Managers Meeting Minutes 8/8/2012