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TOWN OF ORLEANS – BOARD OF HEALTH

MINUTES OF MEETING

November 15, 2012

The Board of Health convened its meeting at 2:05 p.m. on Thursday, November 15, 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, Selectmen Liaison Susan Christie 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 – 32 Shore View Drive

Mr. Canning noted that this item had been incorrectly listed on the agenda; however, all abutters had been notified via certified mail.

Mr. Andrew Grover of Ryder & Wilcox Engineering, Inc. represented Michael and Elizabeth Jones, owners of the property at 32 Shore View Drive. Mr. Grover explained that there is a five-bedroom dwelling on a lot of 51,455 square feet served by a 1978 Code septic system consisting of a 1000 gallon septic tank, distribution box, and six foot by six foot leaching pit with three feet of stone around it. This system was installed in 1993 and has an approved flow of 550 gallons per day. The owner had proposed an addition to the house with no increase in flow. However, to meet the requirements of Title 5 they requested a variance for the reserve area to be shown less than the required ten-foot setback to the property line; and a variance to relocate and replace the 1000 gallon septic tank with a 1500 gallon septic tank (modification to a 1978 Code system).

Mr. Canning outlined the history of the property. In 1993 a new septic system was installed for a five-bedroom dwelling under the 1978 Code Title 5 with a 1978 code reserve area. In 1994 a Building Permit was issued to modify the dwelling from three bedrooms to five bedrooms. In 2005 the dwelling was again remodeled; however it remained a five-bedroom dwelling with no change in footprint.

The current request was to allow for modification to the structure that would not increase the flow; however it would change the footprint of the building. Title 5 requires that whenever an addition to an existing structure, which changes the footprint of a building with no increase in design flow is proposed, the system inspection shall be an assessment to determine the location of all system components, including the reserve area.

The applicant requested a variance to Title 5 in two areas: A variance to Title 5 to allow the reserve area to be located less than ten feet to a property line where a ten-foot setback is required. This variance appears to be directly related to the proposed addition. The second variance requested is to allow for the modification to a Title 5 septic system to allow the existing 1000 gallon septic tank to be replaced with a 1500 gallon septic tank and the installation of a new distribution box to allow both of these components to flow to the existing leaching pit. Mr. Canning explained the standard of review for a variance to allow new construction.

Board members requested that the proponent explain what hardship would be involved if the variances were not granted. Mr. Grover explained that the existing reserve area cannot be relocated without impinging on other components or a property line. He requested clarification of the “new construction” requirement because new construction is defined as requiring a certificate of occupancy and an increase in flow. There will be no increase in flow and the new area will not require a certificate of occupancy. Mr. Grover explained that the “hardship” would be that the proponent would not be allowed to have their addition (allowing a garage), and without the modification to the septic

tank there would be no improvement to the environment and the surrounding wetlands. There would be no reserve area indicated for future use if necessary.

Board members discussed that the increased capacity of the proposed new septic tank would be a definite improvement. They also questioned how often a reserve area is needed. Mr. Canning explained that Title 5 requires approval of a reserve area so the replacement of a septic system (when necessary) will not require a variance. Mr. Grover discussed that his previous employment as a septic system installer allowed him to observe many times and for many reasons, the use of an existing leach pit area for a new leaching area. Mr. Canning noted that in this instance the new addition is utilizing much of the area available for a reserve area. He also explained that in several cases where a new system cannot be installed according to Title 5, an owner has had to apply for a variance or they have had to remove the old system and install a new one in the same location. Under new construction, Mr. Canning reiterated that the proponent must prove hardship as that without the variances the owner would lose all substantial use of the property. It was noted that it is difficult to consider this a hardship because it is a subjective judgment.

On a motion by Mrs. McKusick and seconded by Dr. Schneider, the Board of Health voted in the matter of 32 Shore View Drive. The findings are that this is a property of 51,000 square feet; therefore it supports a five-bedroom home. The owners would like to have a garage on their property and there are constraints due to wetlands and the available property for the use of a system. There is a 1000 gallon tank and a cesspit. 1. I move that we allow them to modify a 1978 Code system, replacing the 1000 gallon tank with a 1500 gallon tank which will be environmentally better for the retention time; and 2. Have designated the reserve area as five feet from the property line, ten is required and five is provided. The vote was 5-0-0.

Agenda Item 3 – Variance Request – 59 Route 6A – Double Dragon Inn

Ms. Judy Wong, owner of the Double Dragon Inn, was present for this hearing.

Mr. Canning explained that Ms. Wong has applied for a variance to the Federal Food Code to be able to utilize Time as a Public Health Control for vegetables used on the cooking line at the Double Dragon Inn. He outlined that TPHC allows food to be removed from the refrigerator and to be on the cooking line for up to four hours without refrigeration. At the end of the four hours the food not used must be discarded.

Ms. Wong explained that this is similar to what they do now without the requirement to label the containers with the expiration time.

On a motion by Attorney Taylor and seconded by Mrs. Suraci, the Board of Health voted in the matter of 59 Route 6A, the Double Dragon Inn, to grant permission for the application. The vote was 5-0-0.

Agenda Item 4 – Preliminary Subdivision Review – 30, 34, and 36 Viking Road

Mr. David Michniewicz, of Coastal Engineering Company, Inc., represented Charles Silbert, owner of the subject property, requesting Tentative Approval of a Preliminary Plan Filing Package for 30, 34, and 36 Viking Road. He explained that the property now exists as three lots which the owner would like to subdivide into four separate lots with sufficient area to accommodate four to five bedroom homes requiring no variances for installation of their septic systems.

Mr. Canning explained that Title 5 requires that the existing septic components located on the plan must be inspected and indicated on the plan to ensure that they are not near the proposed lot lines. The plans must also show that town water is provided and where the lines will be installed. Given the size of the lots from 45,000 to 60,000 the Nutrient Management Regulations will have to be followed. Mr. Canning requested that Mr. Michniewicz ensure that the dwelling on proposed Lot 2 has no more than six bedrooms. Mr. Michniewicz assured Mr. Canning that it does not have greater than six bedrooms. He also explained that Coastal Engineering is under contract to design a new septic system for the existing house on Lot 2; and that all lots will have town water. All lots will conform to the Nutrient Management Regulations as well.

Board members requested information about Lot 3 being a panhandle lot, and the effect of increased traffic. They discussed adding envelopes on the plan to show the proposed location of houses and septic system components and the upgraded septic system for Lot 2. Mr. Michniewicz explained that the existing septic system was inspected during the property transfer; and he also outlined for the Board the approximate location on the plan for the other septic systems. Mrs. McKusick inquired if installation of an I/A system to serve all four lots might be feasible.

Mr. Canning inquired if the bunk house to be removed is a plumbed facility with a septic system to which Mr. Michniewicz stated that it is. Mr. Canning will outline the Board's concerns in a letter to the Planning Board.

Agenda Item 5 – Discussion / Approval Request – 65 Old Colony Way

Mrs. Stephanie Sequin of Ryder & Wilcox Engineering represented Mr. Todd Thayer (also present) of 65 Old Colony Way LLC. She explained that the owner is proposing a new tenant in the building. In July 2010 the Board discussed the use of the smaller portion of the building for a doctor's office which required increasing the approved flow and septic system. In July 2012 the Board granted approval with use of an I/A technology system. The system has been installed. Now the owner is proposing that the occupant would be a Koko Fit Club – a fitness club. Up to ten people at a time would work out for about 30 minutes. The proponent requested classification as an office, not a gymnasium because there will be no showers available as well as no changing areas would be available. This would allow a flow rate of 75 gallons per day per 1000 square feet. Koko Fit Club would be very similar to the current operation at Spaulding with therapists, clients, and several pieces of equipment. The Curves operation was approved as a retail operation of 50 gallons per day per 1000 square feet. The Koko Fit Clubs in Harwich and Dennis are approved as a retail use. No water meter readings are available from those clubs.

Mr. Rob Lowens, manager for Koko Fit Club (also present), stated that there would be ten machines allowing people to work on their own as well as treadmills and elliptical machines for cardio workouts. The average workout is 45 minutes per member if doing both cardio and strength. The club is usually staffed with one person during regular hours.

Mr. Canning explained that there are several fitness clubs in town with different amenities and classifications.

Board members discussed the hours of operation at the club and that it would be open 24 hours per day. It was noted that some people might use the club after 10:00 p.m. They discussed the current variance in place, and the hope that eventually the building would be connected to a future sewer system for Town Center.

Mr. Canning clarified the reason the application was before the Board. There are several fitness clubs in Orleans and several different classifications.

On a motion by Dr. Davis and seconded by Mrs. Suraci, the Board of Health voted in the matter of 65 Old Colony Way to approve the classification of the space to retail space. The vote was 5-0-0.

Agenda Item 6 – Hearing Request – 26 Samoset Road

Mrs. Patricia Marti, owner of the property at 26 Samoset Road, was present for this hearing.

Mr. Canning outlined the history of this property. In 1996 a new septic system was installed at 26 Samoset Road to serve a two-bedroom dwelling on 31,558 square feet. The system consisted of a 1500 gallon septic tank with leaching trenches having a capacity of 453 gallons per day. In 1996 the dwelling was modified to add a third bedroom. In 2002 a Building Permit was issued to add a new kitchen, dining room, and a two-car attached garage. The building plans indicated a future game room above the garage. The Health Department signed off on this 2002 Building Permit for an unfinished storage space over the garage. The builder was informed that finishing the room would make it habitable and would be counted as a bedroom and this would trigger a review of the septic system.

In 2012 the owner of the property came to the Health Department with a request to add a bathroom above the garage. It was discovered that the room above the garage was finished by the owner subsequent to the 2002 Building Permit. Because the lot is 31,558 square feet the property is limited to three bedrooms; this finished room would be considered a fourth bedroom according to the Orleans Board of Health Regulations.

Mr. Canning outlined options for the Board in considering this request. They could request that the owner go back to three bedrooms. The Nutrient Management Regulations would allow an I/A technology system to be installed to allow the fourth bedroom. The Board could require that a deed restriction be recorded that it is a three-bedroom dwelling and that the room above the garage cannot be used as a bedroom.

Board members quoted from the letter, then inquired about the intention of the owner. Mrs. Marti explained that when the builder applied for the Building Permit it allowed for the game room to be finished. The owners thought that the original Building Permit was still in effect when they finished the room.

Mr. Canning added that in 2002 if they had followed the procedures they would have been able to finish the room. It was noted that the builder was informed but not the owner. Mrs. Marti confirmed that access is available from inside the house and not through the garage.

On a motion by Attorney Taylor and seconded by Dr. Schneider, the Board of Health voted in the matter of 26 Samoset Road to grant permission to the Marti's to install their bathroom and file a deed restriction for three bedrooms and it cannot be marketed as a four-bedroom house. The vote was 5-0-0.

Agenda Item 7 – Discussion Request – 191 Route 6A

Mr. David Currier, owner of the Orleans Bowling Alley and the Maytag Laundromat located at 191 Route 6A, was present for this hearing.

Mr. Canning explained the possibilities for increasing the sewage flow at the bowling alley. The 61,825 square foot lot currently has an approved capacity of 1400 gallons per day of sanitary sewage, and 8000 gallons per day of industrial wastewater from the Laundromat. In 2011 the Board of Health approved a minor restaurant of 15 seats using 20 gallons per day. They were required to use only disposable paper products and glass only for service of wine and beer. Mr. Currier would like to increase the restaurant up to 50 seats which would result in an increase in flow. He already exceeds the requirements of the Nutrient Management Regulation with an established flow of 1400 gallons per day.

Mr. Currier explained that the water meter he installed in June showed that he had used less than 10 per cent of the water usage that is allowed. Currently they are using 137.5 gallons per day of water. In response to a question Mr. Currier answered that the septic system was installed in 2001. The Zoning Board referred him to the Board of Health for a variance.

Board members discussed that this property is not included in the current sewer plan for the center of town. The Board could allow a variance with a deed restriction that it reverts to its present usage if sold. Mr. Canning explained that the Board could grant a variance to Title 5 to prove alternative flow but it would need state approval as well. He noted that previously the menu was approved as a full menu.

Agenda Item 8 – Discussion – 29 Giddiah Hill Road - DRCI

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

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

Attorney Taylor noted appreciation for their letter of November 13, 2012 including the Revised Financial Assurance Mechanism.

Mr. Canning reviewed the history of how the amount of material in the building is being measured. A couple of Board members and Mr. Canning made visits to C&D processing facilities in Sandwich and New Bedford. They discussed with DRCI management changes to the FAM to utilize tonnage instead of cubic yards taking into consideration the type of material being measured. DRCI agreed that they would track the number of tons in the building each day by weighing the inbound and outbound loads, as well as inbound and outbound loads arriving or leaving

the entire facility. The Health Department has received a revised FAM Cost Estimate reflecting tonnage, not cubic yards.

Attorney Taylor noted that he had been to DRCI several times and couldn't tell how many cubic feet of material was in the building. He described the differences between the DRCI facility and the others he had visited.

Mr. Daniels explained that with a smaller operation manual labor works best. They would like to know how many tons of stored material would be acceptable to the members of the Board. Mr. Flood discussed the volume of material noting that a 30-yard container will equal approximately .11 tons of fluff material. The 49 tons per day allowed by state and town permits will not change, only the volume. He further explained the purpose of the FAM. DRCI will compare inbound and outbound tonnage to determine how much material is on site on a given day.

Board members referred to the letter of November 15 and compared the tonnage listed and compared it to the previously listed tonnage stated as cubic yards. Attorney Taylor inquired if the listed tonnage would it be acceptable to DRCI. He also inquired how the Board would be able to monitor the amount of material on site.

Mr. Daniels explained that he is working with the scale computer program. Currently they weigh inbound and outbound loads and then calculate the difference; and the program should be able to print a spreadsheet which can be reviewed by the Board of Health.

Mrs. McKusick compared the various materials listed in the letter. Mr. Canning gave the following current tonnage limits: aggregate 60, metal 40, cardboard no number, bulky 35, exempt wood waste 250, exemptible wood waste products 35. Mr. Daniels explained that of that amount approximately 75 tons of unprocessed C&DD material would be outside the building; basically unprocessed material in the building and the aggregate outside. The majority of metals would be outside and the majority of bulk materials would be inside. She emphasized that it is imperative to define everything as tonnage and to be sure that the building is not filled to capacity. Mr. Daniels discussed painting lines on the floor and wall but noted that material spreads as it is sorted and processed. Mrs. McKusick suggested that they continue to observe the amount of material in the building.

Mr. Canning noted that the more important issue is how long the material remains on site. Mr. Flood explained that the outdoors material moves every seven days as required by the permit. Recyclables can stay on site up to sixty days by regulation. Mr. Canning reiterated that he was concerned about the unprocessed C&DD in the building in the process of being sorted. Mr. Daniels explained that bulkies are separated out immediately but may not be removed from the building. Mr. Canning stated that all material in the building is taken into consideration when calculating the tonnage; and the Health Department is utilizing the FAM as a tool to measure compliance. He noted that MDEP is responsible for approving the FAM and the Board of Health is accepting what DRCI is sending to the state and for use for compliance. He emphasized that the Board is not changing the site assignment allowing 49 tons of CD&D material brought on site per day, but are discussing the tonnage stored/processed inside the building. They are changing the measurement of material from cubic yards to tonnage and that is because the process has changed; they are now using kick-sorting and are no longer chipping or grinding. Mrs. McKusick noted that the purpose of the discussion is to develop consistent ways of measuring the amount of material on site.

Attorney Taylor noted consensus of Board members on the proposal to switch to tonnage for measuring the CD&D material on site as described in the new FAM and requested bi-monthly reports from DRCI.

Dr. Davis returned to the meeting at this point.

Agenda Item 9 - 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.

On a motion by Dr. Schneider and seconded by Mrs. Suraci, the Board of Health voted to approve the minutes of the Board of Health meeting held on October 4, 2012 as presented. The vote was 3-0-2. Attorney Taylor and Mrs. McKusick abstained because they were not present for the meeting.

The minutes of the Board of Health meeting held on November 1, 2012 had previously been distributed to Board members for review and approval.

On a motion by Mrs. McKusick and seconded by Mrs. Suraci, the Board of Health voted to approve the minutes of the Board of Health meeting held on November 1, 2012. The vote was 3-0-2. Dr. Schneider and Dr. Davis abstained because they were not present for the meeting.

Agenda Item 10 – Review Correspondence / Old and New Business

10 – 1 – A letter from GHD with the Summary of Quarterly Gas Sampling Results for the Orleans Landfill had previously been distributed to Board members for review and discussion.

10 – 2 – A letter from GHD with the Semi-Annual Groundwater Monitoring Results for the Orleans Landfill had previously been distributed to Board members for review and discussion.

10 – 3 – A memo from the Planning Board regarding Comprehensive Plan Implementation for FY14 Budget had previously been distributed to Board members for review and discussion. Board members discussed that the item of working with the Cape Cod Healthcare is constantly evolving and the percentage of completion should be removed. Mr. Canning noted that the Board has draft regulations for outdoor café style food establishments and each request is reviewed on a case-by-case basis. It was agreed that this item should be considered complete.

10 – 4 – A letter from MDEP dated November 7, 2012 regarding approval of a water vending unit at 9 West Road had previously been distributed to Board members for review and discussion. Mr. Canning explained that Shaw's will now be allowed to bottle town water and sell it from their store.

10 – 5 – A letter from the Health Agent to the Board of State Examiners of Plumbers and Gas Fitters regarding 3 Namskaket Road had previously been distributed to Board members for review and discussion.

Agenda Item 11 – Health Agent's Report

Wholesale Frozen Dessert Manufacturing Permit

The Local Scoop

Ms. Mary DeBartolo, owner of the Local Scoop, currently has a Food Service and Frozen Dessert Manufacturer permit for retail sales. In her application she requested a variance from 105 CMR 561.000, Section 561.006 regarding transportation of the product. She described that she would cool the ice cream to -15° to -27° F and would transport it in a cooler that is lined with ice. Once the product is loaded in the cooler it will be sealed with a tamper-evident seal printed with a unique identifier to assure the cooler remains closed. She states that she has experimented with this delivery system and has maintained product temperature for approximately three hours.

On a motion by Attorney Taylor and seconded by Mrs. McKusick, the Board of Health voted to grant permission for the transportation of ice cream licenses for calendar 2012 and 2013. The vote was 5-0-0.

Temporary Food Permits

Digital Commonwealth

Digital Commonwealth, represented by Vivien Goldman, requested a Temporary Food Permit to serve food at an event at Snow Library, the Crane Room, on December 6, 2012 from 10:00 a.m. to 5:10 p.m. She plans to serve sandwiches prepared and packaged at a licensed market or restaurant, as well as water, soda, coffee, tea, and cookies.

On a motion by Mrs. McKusick and seconded by Mrs. Suraci, the Board of Health voted to approve the Temporary Food Permit for Digital Commonwealth for an event at Snow Library on December 6, 2012. The vote was 5-0-0.

Gypsy Wind Productions

Gypsy Wind Productions represented by Jean Meike had requested a Temporary Food Permit for the Down Cape Faire to be held at the Nauset Middle School on November 23 and 24, 2012 from 10:00 a.m. to 5:00 p.m. Low sugar jams made at a licensed kitchen in Maine would be offered for sampling with Keebler Club crackers. There will be no bare-hand contact and there are restroom facilities at the school.

On a motion by Dr. Davis and seconded by Dr. Schneider, the Board of Health voted to approve a Variance and a Temporary Food Permit for Gypsy Wind Productions for the Down Cape Faire to be held on November 23 and 24, 2012 at the Nauset Middle School. The vote was 5-0-0.

Discussion

11 – 1 – Approval of Annual Licenses/Permits

Mr. Canning guided the Board members through the list of licenses and permits prepared for their approval upon receipt of a complete application and associated fee.

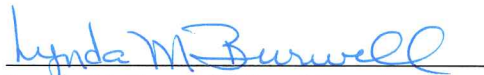
On a motion by Attorney Taylor and seconded by Mrs. Suraci, the Board of Health voted to approve the Annual Licenses and Permit as listed in packet item 11-1. The vote was 5-0-0.

Mrs. Christi inquired about testing of the wells and gas measurements at the Orleans Landfill. She noted that they are noted to be consistently running high. Mr. Canning explained that the flame had extinguished itself over a week-end and the gas had built up in the wells prior to the monitoring. Everything was fine after the flame was reignited.

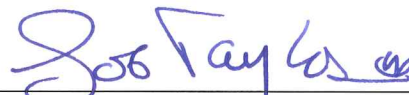
Agenda Item 12 – Adjournment

On a motion by Mrs. Suraci and seconded by Mrs. McKusick, the Board of Health voted to adjourn this meeting at 3:58 p.m. The vote was 5-0-0.

Respectfully submitted,


Lynda M. Burwell, Board Secretary

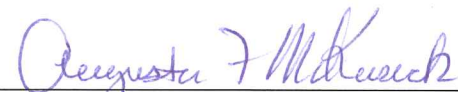
ORLEANS BOARD OF HEALTH



Attorney Job Taylor, III; Chairman


Jan Schneider, M.D.


Elizabeth Suraci, Vice Chair


Robin K. Davis, Ph. D.


Augusta F. McKusick


Date Approved/Accepted

**Documents Provided For the November 15, 2012
Meeting of the Orleans Board of Health**

Agenda Item 2 – Variance Application Request – 32 Shore View Drive

- 2 – 1 – Request for Variance prepared by Ryder & Wilcox Engineering, Inc.
- 2 – 2 – Existing Floor Plan with Renovations 2005
- 2 – 3 – Site Plan- Proposed Septic System Alteration

Agenda Item 3 – Variance Request – Double Dragon Inn – 59 Cranberry Highway

- 3 – 1 – Letter Request from Judy Wong dated October 29, 2012
- 3 – 2 – Excerpts from the FDA Food Code 1999

Agenda Item 4 – Letter Request for Review – Viking Road Preliminary Subdivision Plan

- 4 – 1 – Letter from Coastal Engineering Company dated November 2, 2012
- 4 – 2 – Site Plan for Viking Road Preliminary Subdivision Plan

Agenda Item 5 – Request for Hearing – 65 Old Colony Way

- 5 – 1 – Hearing Request Form
- 5 – 2 – Proposed Floor Plan – KoKo Fit Club
- 5 – 3 – OHD Letter dated July 18, 2012
- 5 – 4 – Excerpt of July 8, 2010 Board of Health meeting minutes
- 5 – 5 – OHD Letter dated June 10, 2003
- 5 – 6 – Excerpt of December 14, 2006 Board of Health meeting minutes
- 5 – 7 – Excerpt of June 5, 2003 Board of Health meeting minutes

Agenda Item 6 – Request for Hearing – 26 Samoset Road

- 6 – 1 – Request for Hearing
- 6 – 2 – Building Permit Note dated October 9, 2002 and floor plan of Game Room

Agenda Item 7 – Request for Hearing – 191 Route 6A

- 7 – 1 – Hearing Request form
- 7 – 2 – OHD Letter dated October 5, 2011 and Excerpt of September 1, 2011 OBOH meeting minutes
- 7 – 3 – Zoning District Map
- 7 – 4 – Excerpt of Title 5, 310 CMR 15.000 (4) and (5)

Agenda Item 8 – Discussion – 29 Giddiah Hill Road

- 8 – 1 – Excerpt of August 16, 2012 OBOH meeting minutes
- 8 – 1A – Green Seal letter dated November 15, 2012
- 8 – 2 – Closure Plan and FAM Cost Estimate

Agenda Item 9 – Approve Minutes

- 9 – 1 – OBOH Minutes of Meeting held on October 4, 2012
- 9 – 2 – OBOH Minutes of Meeting held on November 1, 2012

Agenda Item 10 – Review Correspondence / Old-New Business

- 10 – 1 – GHD Summary of Quarterly Gas Sampling Results – Orleans Landfill
- 10 – 2 – GHD – Semi-Annual Groundwater Monitoring Results – Orleans Landfill
- 10 – 3 – Planning Board memo – Comprehensive Plan Implementation – Budget FY14
- 10 – 4 – MDEP Permit Approval – Water Vending Unit – 9 West Road
- 10 – 5 – OHD Letter dated November 1, 2012 – 3 Nameskaket Road

Agenda Item 11 – Board of Health Permits 2013

- 11 – 1 – List of Annual Licenses / Permits