



K Daley, Asst

14 MAR 4 8:36AM

**ORLEANS PLANNING BOARD and BOARD OF HEALTH**

FEBRUARY 5, 2014 - Minutes

The joint meeting was called to order by Job Taylor (Board of Health) and Chet Crabtree (Planning Board) at 3:08 p.m. in the Nauset Meeting Room at the Orleans Town Hall.

**Present from Planning Board:** **Chairman:** Steve Bornemeier; **Vice-Chairman:** Charles Bechtold; **Clerk:** Chet Crabtree; and John Fallender. **Associate:** Paul McNulty. **Planning Department Staff:** George Meservy; and **Secretary:** Karen Sharpless.

**Present from Board of Health:** **Chair:** Job Taylor, III; Elizabeth Suraci; Robin Davis; and Jan Schneider. **Health Department Staff:** Robert Canning.

**Also Present:** Jon Idman and Patti Daley (Cape Cod Commission), Dale Fuller (Finance Committee) and John Hodgson (Board of Selectmen).

**Absent:** Kenneth McKusick and Andrea Reed (Planning Board); Augusta McKusick (Board of Health) and Jon Fuller (Board of Selectmen).

**FERTILIZER REGULATIONS**

Job Taylor gave an introduction of the Planning Board and Board of Health members present at the meeting and an explanation of existing Board of Health regulations and input received from Cape Cod Commission staff including Jon Idman and Patti Daley. A note was made that Jon Idman is the author of the fertilizer regulations.

Bob Canning gave the following summary of differences between the existing town bylaw and the proposed regulation:

<u>Issue</u>	<u>Existing Town By-Law</u>	<u>Proposed Regulation</u>
<u>Certification of Applicators</u>	No	Yes
<u>Application restrictions</u>	Yes <ul style="list-style-type: none"><li>• Prohibited from applying between October 16 &amp; April 14</li><li>• Cannot apply during or immediately prior to heavy rainfall</li><li>• Cannot apply to impervious surfaces</li><li>• Cannot apply within 100 feet of a resource area</li></ul>	Yes <ul style="list-style-type: none"><li>• Non certified applicators (NCA) cannot apply between November 12 &amp; April 14</li><li>• NCA cannot apply during or immediately prior to heavy rainfall</li><li>• NCA cannot apply within 100 feet of a water body without approval</li><li>• NCA cannot apply phosphorus without a soil test has been taken in the previous 3 years</li><li>• Cannot apply to impervious surfaces</li></ul>
<u>Amount restrictions</u>	<u>Recommendation</u> <ul style="list-style-type: none"><li>• Single application at 0.5 pounds nitrogen/1,000sf</li><li>• Annual rate of 1 pound/1,000 sf</li></ul>	<ul style="list-style-type: none"><li>• Single application shall not exceed 1 pound of nitrogen per 1,000 sf.</li><li>• Annual rate cannot exceed 3.2 pounds of nitrogen /1,000sf</li></ul>
<u>Fertilizer formulation</u>	<ul style="list-style-type: none"><li>• Fertilizer should be of an organic slow release water soluble form</li></ul>	<ul style="list-style-type: none"><li>• Fertilizer must have 20% slow release nitrogen</li></ul>
<u>Certified applicators</u>	N/A	<ul style="list-style-type: none"><li>• Exempt from the above requirements</li></ul>

		<ul style="list-style-type: none"> <li>• <u>Relies on Cape Cod Cooperative Extension service to have education/certification programs</u></li> <li>• <u>Certain town officials &amp; Landscape professionals are exempt from certification</u></li> <li>• <u>Non-certified applicators may apply fertilizer under the direct supervision of a certified applicator.</u></li> </ul>
<u>Exemptions</u>	<ul style="list-style-type: none"> <li>• <u>Application of fertilizer for agricultural Use</u></li> <li>• <u>Applications to home gardens, landscape plantings</u></li> <li>• <u>New vegetation in first growing season</u></li> <li>• <u>Yard waste compost</u></li> </ul>	<ul style="list-style-type: none"> <li>• <u>Fertilizer for agricultural Use</u></li> <li>• <u>Applications to home gardens, landscape plantings</u></li> <li>• <u>New vegetation in first growing season</u></li> </ul>
<u>Enforcement</u>	<ul style="list-style-type: none"> <li>• <u>Enforcement through Zoning Officer.</u></li> </ul>	<ul style="list-style-type: none"> <li>• <u>Non-Criminal Disposition \$300/day commencing 10 days after written notice from Board of Health</u></li> <li>• <u>Health Department</u></li> </ul>

Patti Daley explained the purpose of the bylaw is to restore local authority which was eliminated under legislation. It was acknowledged that Orleans has a bylaw which is grandfathered in the District of Critical Planning Concern. There is a model which can be used for a bylaw format with a deadline which has been extended by a year until December 31, 2014.

Idman explained there is a difference between bylaws which must be approved by the Attorney General vs. regulations which can be done through the Board of Health. Board members discussed the designation known as District of Critical Planning Concern and the restoration of authority previously removed from towns. Jon Idman noted that with the additional time allotted, model regulations can be drafted and the Cape Cod Commission is willing to help and noted that the enforcement authority could be the Health Agent. Board members discussed sunsetting the use of fertilizers containing phosphorous by certified and non-certified applicators. A discussion was held on certifications through the County Extension Services. There was agreement on the need for homeowners to be educated regarding fertilizer use and how to read the packaging. Elizabeth Suraci questioned funding for the certificate education process and Jon Idman responded that the funding would come from County funds.

*Paul McNulty left the meeting at this point.*

Chet Crabtree questioned whether creating a new bylaw would negate the bylaw already passed by the Town of Orleans and approved by the Attorney General. George Meservey questioned how proof would be obtained if a neighbor files a complaint? There was a discussion of how retailers would handle eliminating phosphorous from synthetic fertilizers, but other fertilizers such as organic could still contain phosphorous.

John Fallender questioned how neighboring towns could have a unified approach to the problem and whether there is a test to determine if a lawn was over-fertilized. Jon Idman responded that due to its travel pattern, there is no test for nitrogen, but phosphorous can be tested.

Chet Crabtree noted that Orleans created its own bylaw, to be used as a guideline, due to the long unsatisfactory wait for a Cape-wide solution. Crabtree noted there is no plan for "lawn police" in Orleans.

Job Taylor noted the difficulty in enforcement, and stated it is important to make the homeowner understand it is good for them as well as the town and subscribe to the program voluntarily.

Elizabeth Suraci urged support for the importance of the education component since people need to understand "why" they have to do something before they will comply. Robert Canning agreed on the need for education from the County Commission Extension Service for homeowners, but noted it will take time. John Fallender agreed that homeowners need to understand the rules when they are applying their own fertilizer. Idman stated that the Scotts Company is good about following the regulations in each community.

Job Taylor thanked Jon Idman for coming with information and questioned the intent that the Board of Health take charge. Jon Idman suggested getting the Conservation Commission involved in the process.

**Public Comments:**

**Sandy Bayne** (Orleans Pond Coalition) questioned a lack of focus on phosphorous on the ponds and pointed out that it needs to be brought to the public attention. Bank noted that regulations for Phosphorous may be stringent, but there is no way to tell Agway they can't sell fertilizer to someone putting it on their lawn and nobody asks the consumer what they are buying it for. Bank stated it is a public health issue and poses dangers.

**Rigney Cunningham** (Orleans Pond Coalition) questioned the issue of enforcement and suggested that education seminars be held to encourage a behavioral change in order to do the right thing for local waters.

**Steve Bornemeier** questioned what the Orleans Pond Coalition has done regarding public education on the issue.

**Rigney Cunningham** responded that letters have gone out to landscapers and they are holding "Awareness Days" which should be supported by the town.

**Carolyn Kennedy** (Water Quality Task Force) noted that the Board of Health and the State have come in to test water in two fresh water ponds which resulted in them being posted and closed. Kennedy stated that more and more fertilizers products are going into our ponds with toxins which are lethal to humans and animals.

**Dale Fuller** (Finance Committee) agreed that education is clearly the key.

**Steve Bornemeier** responded that education could begin in the schools.

**Bob Canning** suggested that the two boards need to discuss whether there is a need for any change and whether it is for a bylaw or regulation.

**Job Taylor** responded that more thought is required, but it is too early for a discussion.

**Steve Bornemeier** questioned whether there is a need for a public hearing.

**Bob Canning** responded that was not his intent, but it is important to determine if we are going to move forward with any changes at this time.

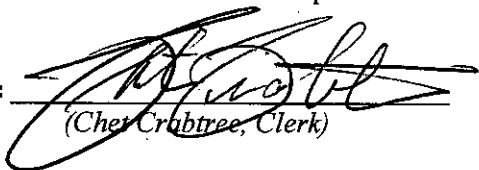
**Job Taylor** stated his opinion that there is currently a regulation and it might be prudent not to move forward at this time.

**ADJOURNMENT**

**MOTION:** A motion was made and seconded to adjourn the meeting at 4:12 p.m.

**VOTE:** 4-0-0 The motion passed unanimously.

**SIGNED:**

  
(Cher Crabtree, Clerk)

**DATE:**

2/25/14

**LIST OF HANDOUTS FOR FEBRUARY 5, 2014 PLANNING BOARD MEETING:**

1. *Memorandum to Board of Health dated November 18, 2013*
  2. *Cape Cod Commission Model Fertilizer Regulation*
  3. *Town of Orleans, Fertilizer Nitrogen Bylaw, Chapter 103*
  4. *Barnstable County Department of health & the Environment letter dated October 7, 2013*
  5. *Copy of e-mail from Jon Idman regarding Fertilizer Regulation extension*
-