

## **TRURO PLANNING BOARD**

### **Meeting Minutes**

**November 18, 2015 - 6:00 pm**

**Truro Town Hall**

**Planning Board Members Present:** Lisa Maria Tobia; Steve Sollog; Bruce Boleyn; John Riemer; Michael Roderick; Peter Herridge; and John Hopkins

**Members Absent:** None

**Other Participants:** Jonathan Silverstein, Town Counsel; Paul Kiernan; Christopher J. Snow, Esq.; David Clark, P.E.; Donald Poole, Outermost Land Survey, Inc.; Kendra Kinschurf, Esq.; Gloria Cater; Joan Holt; Phil Smith, Truro Conservation Trust; Duane P. Landreth, Esq.; John McElwee; Daniel Duarte; Maureen Burgess; Carole Ridley, Planning Consultant; Shawn Grunwald

Ms. Tobia opened the meeting at 6:00 p.m.

**Public Comment Period:** The Commonwealth's Open Meeting Law limits any discussion by members of the Board of an issue raised to whether that issue should be placed on a future agenda.

Paul Kiernan distributed a handout for the Board regarding the current definition of street and asked that the Board discuss the 2004 Bylaw rewrite at the next meeting. He would like the discrepancy which omits key regulations from 1989 addressed.

Mr. Kiernan also requested written clarification on previous discussions concerning nonconforming roads.

### **Definitive Subdivision Continuance**

**6:00 pm 2015-007PB** – Fisher Road Realty Trust, Willie J. Cater and Gloria J. Cater, Trustees have filed an application for approval of a Definitive Plan with the Clerk of the Town of Truro pursuant to MGL c.40A, Section 81T and Section 2.5 of the Town of Truro Rules and Regulations Governing the Subdivision of Land with respect to their property known and numbered 9B Benson Road, Truro and shown as Parcel 50 on Truro Assessor's Map, Sheet 53. The Application seeks approval of a single lot subdivision access to and egress from which will be served by a driveway located over a right of way as meeting the specifications set forth in a Judgment entered in the Commonwealth of Massachusetts Land Court. Continued from October 6, 2015.

**Representatives: Christopher J. Snow, Esq., David Clark, PE, Donald Poole, Land Surveyor**

Mr. Snow inquired what members would be deliberating on this matter. Mr. Hopkins provided Mr. Snow with a copy of a disclosure he has filed. Mr. Snow did not find any objection to Mr. Hopkin's participation in the deliberation on this matter because there is no economic interest. Mr. Snow stated that he objects to Ms. Tobia because she is a trustee of the Truro Conservation Trust which he believes has a financial interest and is an abutter. He also objects to Mr. Riemer because of his past public comments on this matter. Ms. Tobia responded that she has obtained a legal opinion from Town Counsel as well as an opinion from the State Ethics Commission that would allow her to participate in the deliberations. She also emphasized that she takes her responsibility as a member and Chair of the Planning Board to uphold the bylaws of the Town very seriously. Mr. Riemer also stated that he has spoken with the State Ethics Commission and it is their opinion that previous comments have no bearing on the current situation. In addition, it is the opinion of Town Counsel that although Mr. Riemer lives in the general vicinity of the Cater property, he is not an abutter and this is not an issue.

There was a recess from 6:25 p.m. to 6:35 p.m. to allow Ms. Tobia and Mr. Riemer to further consider Mr. Snow's objection to their participation.

When the meeting resumed, Ms. Tobia stated that although she would be impartial and unbiased, as a gesture of good will to the applicants, recused herself and left the room.

Mr. Riemer stated that he took oath of office upon elected and would remain on the Board to hear the applicant and would be unbiased and independent. Any decisions he would make would be guided by the Rules and Regulations as stated in the Planning Board Handbook.

Mr. Sollog assumed the Chair of the Board.

Mr. Snow referred to the August 13, 2015 application, as there had been a previous application which was denied. He stated it is the desire of the Caters to build on the lot that they purchased pre-1997 as a residential lot and have been paying taxes on the lot as a buildable lot. When they purchased the lot, they understood that they had access to the lot. This brought the matter to Land Court which was deliberated in two phases. In the first phase, Judge Piper determined that there was an easement. In phase two, the Judge determined the location of the easement. Because of internal contradictions, the case was then referred to the Supreme Judicial Court which sent it back to the original Judge. Judge Piper made a final decision that the Caters are entitled to an easement and decided where the easement exists and deferred to the town to enforce local bylaws. The previous application was denied because there was concern about the slope of access. This has resulted in the current application as they have addressed this concern in this application. He further stated that he disagrees with the opinion of Town Counsel that a single lot is not a subdivision as there are several of these in town. He asked that the Planning Board base their decision solely on the road issue as per the Land Court judgement.

Mr. David Clark, P.E. reviewed the waivers for the road.

Mr. Sollog asked Town Counsel Jonathan Silverstein to come forward. Mr. Silverstein stated that there are several issues that he has rendered an opinion on concerning this application. The first is the issue of a plan that shows a single lot subdivision. The application is under the subdivision control law and by definition, a subdivision is two or more buildable lots. There is an anomaly in the law that directly impacts this case as they are not eligible for an ANR (Approval Not Required), which would be appropriate for a single lot, because it could not meet the required frontage. With regard to the Planning Board's past approvals of single lot subdivisions, case law does not require a Board to render decisions consistent with prior errors in judgment by previous Boards. A third issue is that relief from the ZBA would be required for the street frontage to be considered as legal frontage for the subdivision because the road as the judgement currently has it laid out would not meet Truro zoning bylaws and a waiver of that requirement is not in the jurisdiction of the Planning Board. He lastly commented that the Board does have the authority to waive certain road design requirements if they deem it as a safe and adequate road in the public interest.

Mr. Herridge stated that, based on his background as an attorney, he disagreed with Mr. Snow's characterization of the court decision. He stated that Judge Piper was very clear that his decision should not influence the Board with approving or not approving this road. He further stated that there are a number of waivers being requested that are inconsistent with the subdivision control law and do not provide for the public interest except for the applicant.

Mr. Riemer stated that there are three additional waivers that have come to the attention of the Planning Board and that the Board needs to enforce the Bylaws as written.

Ms. Kendra Kinschurf, Esq. of the law firm Davis, Malm and D'Agostine, representing Lucy Clark, an abutter came forward. She clarified that the judgement was on an easement issue and he determined that an easement

existed and defined the location and width of the easement. He did not determine the safety and adequacy under subdivision regulations or zoning, leaving that up to the town. Further, she agreed with Town Counsel that this plan does not meet the subdivision rules and requirements because it is a single lot and the Board does not have the authority to approve this plan. She further stated that if the waivers are approved, it will present a safety hazard.

Mr. Phil Smith, Trustee of Truro Conservation Trust stated that the Trust does not support the application. The land owned by the Trust was clarified on the road plan for Board members.

Gloria Cater, applicant, clarified that any contention has come from neighbors and opponents. She also clarified that the abutters were given the option to work with the Caters to come up with a workable road layout but were unwilling. There is no indication from town safety officials that emergency vehicles would have difficulty with the proposed road and that the proposed road would be unsafe.

Mrs. Joan Holt stated that she is an abutter and has sent written communication to the Board. Her property also has a steep access to her house, which is problematic in the winter. In addition, she had a personal experience recently with an ambulance having difficulty accessing her house for her husband.

Mr. Sollog read a letter into the record from handwritten letter from Natalie Ferrier, 21 Stephen's Way.

Mr. Riemer received clarification about the waivers requested. Mr. Hopkins expressed his concern about the grade of the proposed road based on his construction experience in Truro.

Ms. Ridley reviewed the Board options as per the staff memo in the packet and the timeframe of a decision required by December 25, 2015.

Mr. Herridge and seconded by Mr. Boleyn moved to deny the application for a Definitive Plan based on the multiple inadequacies of the road. Motion withdrawn by Mr. Herridge and Mr. Boleyn at the suggestion of Town Counsel's recommendation to address each waiver prior to any decision on the application to assess whether each waiver was in the public interest and consistent with the subdivision control law.

Mr. Riemer noted the regulations with respect to waiver requests, which require written requests with explanation and justification for waivers. This information was not provided.

On a motion by Mr. Herridge and seconded by Mr. Riemer, the Board voted to consider each waiver for a vote, so voted 6-0-0.

On a motion by Mr. Boleyn and seconded by Mr. Herridge, the Board voted to deny the waiver to reduce the minimum right of way by 28 feet, so voted 4-0-2 (Mr. Roderick and Mr. Hopkins).

On a motion by Mr. Boleyn and seconded by Mr. Riemer, the Board voted to deny the waiver to reduce the minimum roadway width by two (2) feet, so voted 4-1-0 (Mr. Sollog opposed, Mr. Roderick abstained).

On a motion by Mr. Boleyn and seconded by Mr. Herridge, the Board voted to deny the waiver to reduce the shoulder width by two (2) feet, so voted 4-1-1 (Mr. Hopkins opposed and Mr. Roderick abstained).

On a motion by Mr. Boleyn and seconded by Mr. Herridge, the Board voted to deny the waiver for a reduced clear site distance by 75 feet, so voted 4-1-1 (Mr. Hopkins opposed and Mr. Roderick abstained).

On a motion by Mr. Herridge and seconded by Mr. Boleyn, the Board voted to deny the waiver to allow a

grade of 14% as listed on the plan, so voted 5-0-1 (Mr. Roderick abstained).

On a motion by Mr. Herridge and seconded by Mr. Boleyn, the Board voted to deny the waiver to allow for an intersection standard by 28 degrees (tied into the curb radius), so voted 4-0-2 (Mr. Roderick and Mr. Hopkins abstained).

On a motion by Mr. Herridge and seconded by Mr. Boleyn, the Board voted to deny the waiver to allow for a dead end turnaround that would be less than 40 feet, so voted 5-0-1 (Mr. Roderick).

On a motion by Mr. Riemer and seconded by Mr. Herridge the Board voted to deny a waiver of the requirement for a legend on the Definitive Plan, so voted 4-1-1 (Mr. Sollog opposed and Mr. Roderick abstained).

On a motion by Mr. Herridge and seconded by Mr. Boleyn, the Board voted to deny the waiver of the requirement to show trees 10' in diameter or greater on the Definitive Plan, so voted 5-0-1 (Mr. Roderick abstained).

On a motion by Mr. Herridge and seconded by Mr. Boleyn, the Board voted to deny the waiver of the requirement to show the location of ancient ways, historic walls etc. per §2..5.2.b(31), so voted 5-0-1 (Mr. Roderick abstained)

On a motion by Mr. Boleyn and seconded by Mr. Herridge, the Board voted to close the public hearing at 8:27 p.m., so voted 6-0-0.

On a motion by Mr. Hopkins and seconded by Mr. Herridge, the Board voted to reaffirm in total all votes taken prior to the close of the public hearing, so voted 5-0-1 (Mr. Roderick abstained).

On a motion by Mr. Herridge and seconded by Mr. Boleyn, the Board voted to deny approval of the Definitive Plan and method of road construction for Fisher Road Realty Trust, Doctor Willie J. and Gloria J. Cater, Trustees, as submitted and with the requested waivers pursuant to MGL c.41, §81-Tand §81 U and Section 2.5 of the Town of Truro Rules and Regulations Governing Subdivision of Land, for property located at 9B Benson Road, Truro, and shown as Parcel 50 on Truro Assessor's Map, Sheet 53 based on the following findings: all the requested waivers have been denied, this parcel is a single lot subdivision which is not authorized under the subdivision control law and it is not in compliance with the street definition as set forth in the zoning Bylaws, so voted, 5-0-1 (Mr. Roderick abstained).

There was a recess at 8:26.

The meeting resumed at 8:36 by Chair Lisa Maria Tobia.

### **Preliminary Subdivision**

**2015-008PB Secrest Family Trust**, seeks approval of a 2 lot preliminary subdivision pursuant to MGL c.41, Section 81-S and Section 2.4 of the Town of Truro Rules and Regulations Governing the Subdivision of Land for property located at 54 Old Kings Highway, Assessors Map 47, Parcels 120 & 20.

**Representatives: Duane Landreth, Esq.; John McElwee, Surveyor**

Mr. Landreth explained that the preliminary subdivision is to allow for one additional residence on the property that currently has one single family residence. It is located on Old Kings Highway. The current proposed plan would improve part of Old Kings Highway as well as include the building of a new way and

cul de sac for access to the reconfigured lots, and provides a 40 foot lay-out to, among other things, provide for access by emergency vehicles.

Mr. McElwee provided detailed information about the proposed plan, including information about a new road with a cul de sac that would be approximately 120 feet in length and at least 40 feet in width. There would be two (2) lots created off of this (one new buildable lot). The road will conform to zoning and subdivision standards. Old King's Highway would be widened to 14 feet just be along the Secrest property.

Mr. Landreth conveyed that they are willing to continue the discussion with the Board beyond the November 23, 2015 date.

In a response to an inquiry by Mr. Herridge, Mr. Landreth stated there is no easement or access to the property from Union Field Road. He indicated that by widening Old King's Highway for approximately 600 feet, with no present intention to extend this beyond the proposed cul de sac, this improvement would serve the public's interest.

Mr. Landreth was unsure of ownership extended to the center of the road. Mr. Hopkins stated that this may be an important consideration. Mr. Hopkins also voiced his concern with the current deed restriction that does not allow for further subdivision of the property. Mr. Landreth believes this restriction will expire next year. Mr. Landreth indicated that they are willing to preserve the rural character of Old King's Highway.

Regan McCarthy, landowner in the Higgins Hollow area, posed several questions regarding how many improved properties have been identified, the impact on the unique topography of the land and would like to see if the property can be developed without changes to Old King's Highway. She also raised her concern about the existing land court cases in the area and confirmed that property owners own to the central line of the road.

Mr. Danny Duarte, 50 Old King's Highway, expressed his concern that the changing of the orientation from east to west to north to south presents an opportunity to allow for further subdivision. He detailed why he believes the road cannot handle any further subdivision.

Mr. Riemer found in his research that there is a deeded 40 foot right of way off Union Field Road for parcel 20. Mr. Landreth will further investigate this.

Ms. Tobia indicated that because this modification will impact a public way and may present some safety concerns, the Board of Selectmen need to be involved. Mr. Landreth questioned this. It was clarified that this property is not within the Seashore District. Mr. Silverstein provided clarification between private and public ways.

Mr. Silverstein summarized his opinion on the street definition and how it applies to this preliminary plan application for a subdivision as opposed to an ANR.

Ms. Ridley provided the following summary of issues and concerns that require further information or investigation:

- The existing deed restriction that limits the subdivision for the larger parcel
- Potential for other easements for the newly created lot 2
- Questions about ownership to the center of the road
- Who has say given that Old King's Highway is a public way for allowing improvements

- Public comments that suggested considering alternatives that include no improvements to Old King's Highway
- Impact and legality of a road that is only partially improved

On a motion by Mr. Hopkins and seconded by Mr. Herridge, the Board voted to continue the Preliminary Subdivision 2015-008PB Secrest Family Trust to January 5, 2016 to address the above concerns and issues, so voted 7-0-0.

### **Temporary Sign Permits**

**Payomet Performing Arts Center**, seeks approval for an Application for Temporary Sign Permit pursuant to §11 of the Truro Sign Code two (2) Temporary Signs (November 15 – December 15) for various events in two locations (Route 6 at Noons Heights Rd and Route 6 at South Highland Rd).

Ms. Ridley pointed out that the dates on the application need to be amended as they do not coincide with the date of this meeting and the request cannot be granted retroactively. On a motion by Mr. Boleyn and seconded by Mr. Roderick, the temporary sign requests were granted with the amended dates of November 18, 2015 through December 16, 2015, so voted 7-0-0.

### **Update on Seashore District Zoning Proposal**

Mr. Riemer and Mr. Herridge are part of a working committee assembled to look at some of the issues raised by Town Counsel concerning the proposed seashore district zoning. A brief overview meeting was held with participants of a prior work group that had developed the draft reviewed by Town Counsel. An expanded work group is being formed to include Maureen Burgess as the liaison to the National Seashore as well as Mr. Robert Weinstein as someone who resides within the Seashore District. It was proposed that another meeting be held on December 8, 2013 either at 2:00 or 3:00. The hope is that the proposed zoning changes can be brought to Town Meeting in Spring 2016.

### **Discuss Protocol for Requesting Town Counsel Opinions**

Ms. Tobia stated that the Planning Board will adopt the process of consensus to determine when a Town Counsel opinion should be requested through the Town Administrator. This is the same process used by the Board of Selectmen.

### **Review and Approval of Meeting Minutes:**

On a motion by Mr. Herridge and seconded by Mr. Boleyn, the minutes from the October 27 Joint Meeting with Board of Selectmen was approved, so voted 4-0-3 (Mr. Roderick, Mr. Herridge and Mr. Hopkins abstained).

On a motion by Mr. Boleyn and seconded by Mr. Sollog, the minutes from the November 4, 2015 Planning Board meeting was approved as amended to include two additional conditions from the Terrace Dunes Application for Commercial Development Site Plan Review that were omitted, so voted 6-0-1 (Mr. Hopkins).

### **Reports from Board Members and Staff**

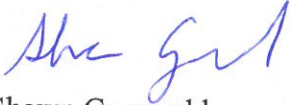
- Draft Agenda for Joint Meeting with Zoning Board of Appeals  
The date of December 7, 2015 is confirmed and any additional agenda items should be brought to the attention of Ms. Tobia.
- Other

Ms. Tobia requested that inquiries from members about planning policy issues should go through her, rather than to Carole Ridley directly.

Due to the lateness of the hour, the remaining agenda items were tabled.

Meeting adjourned at 10:06 p.m.

Respectfully Submitted,



Shawn Grunwald  
Recording Secretary

