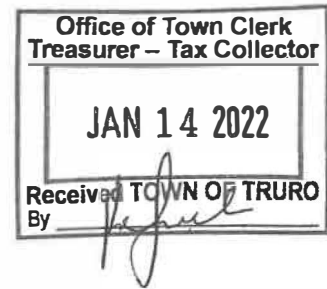


TRURO PLANNING BOARD  
March 10, 2021  
Draft Minutes



Attending: Anne Greenbaum – Chair, Steve Sollog – Vice Chair, Jack Riemer – Clerk, Paul Kiernan, Bruce Boleyn, Rich Roberts, Peter Herridge  
Barbara Carboni – Interim Town Planner

Absent:

Meeting called to order at 5:02 pm

**Public Comment**

No Public Comment

**Public Hearing** Continued from Jan 6

**2020-006/SPR – Anne Labouisse Peretz; William T. Burdick & Richard C. Vanison, Trustees, Dune House Nom. Tr.** for property located at 112 North Pamet Road (Atlas Map 48, Parcel 1).

For Applicant: Ben Zehnder – Attorney; Dan Costa – Project Architect; Brad Mallo, Coastal Engineering – Site Engineer; Theresa Sprague, Blue Flax Design – Vegetation Mitigation Specialist

Attorney Zehnder

This is removal of home due to coastal erosion and building of new home further inland

- Changes made in response to feedback from last meeting
  - Move property back from setback line 25ft to conform with zoning bylaw
  - Redesign house to conform with height requirement (30 ft)
  - Therefore, will need no variances from ZBA, only application to ZBA will be for alteration of a structure on previously existing non-conforming lot
  - Floor area of project has been reduced from original plan 2,977 sq.ft. to 2,590 sq. ft.
- Have submitted landscape plan with mitigation – plan to recreate natural vegetation on site and some stabilization of site where original house will be demolished
- Oriented on site to take advantage of light and wind
- Consistent with architecture in neighborhood
- MESA application submitted

Theresa Sprague – gave overview of vegetation plan – Goal – within 7 years property line indistinguishable

## Questions/Concerns from Board Members

- 1) Grading & fill
  - a. Amount of grade changes proposed at new site
  - b. Minimizing removal/addition of soil (fill)
  - c. Truck trips & wear on road
  - d. Options to this amount of grading in addition to mentioned hardscape
  - e. Issue raised about activities permitted/prohibited in Seashore –
    - i. 30.3b allowed activities includes building and alteration as principal use.  
In this case the fill is not principal use, the residence construction is.
- 2) Preservation of landscape as far as practicable (section 70.4 d3 of Zoning Bylaws)
  - a. Extent of grading/revegetating will create very different landscape than what is there now,
- 3) House location & impact on scenic view, very visible from adjoining hillside. There are less visible locations on the site that are also flatter and would require less grading.

## Applicant Responses & Discussion

- 1) Landscaping, Grading & Fill Concerns
  - a) Existing slope being maintained with this grading, Option would be some sort of hardscape – revetment, retaining wall.
    - i) At Jan. hearing Board did not seem in support of hardscape
  - b) Attorney Zehnder: language of bylaw is to “preserve as much as practicable”
  - c) Intention to use existing material rather than bringing in truckloads of material
  - d) We can bring in calculation on amount of fill needed. Intent is to use fill from site as much as possible rather than bringing in all fill.
- 2) Visibility
  - a) Attorney Zehnder – not issue for Site Plan Review, it is a buildable lot in the Seashore District
  - b) Town Planner – Board can take into consideration impact of proposed on surroundings, including in Seashore, concerns valid BUT owner has vested rights – allowed to rebuild on the lot
- 3) Location on site
  - a) Town Planner – property owner has vested rights & is entitled to construct house somewhere. Board, under Site Plan Review, not required to site house simply according to owners’ preference. Concerns board has expressed regarding location within Seashore are balanced with where owner would like to site house.

Peter Herridge – I will need to recuse because I can’t vote for this

Town Planner – don’t need to recuse if feel strongly – that’s why have members with diverse opinions

Chair asked if there is more information board members would like before voting

- 1) Opportunity to hear from the owner as to whether would entertain changing to more suitable location
  - o Attorney Zehnder: if Planning Board is asking her to site house in hole on property, it would upset her. This will also cost yet more time to redo plans.
  - o If looks like Board would vote to deny, will take this request to her

Member of Public Comment:

Ann Irwin –

- Concerns about earlier work that didn't comply with Seashore Regulations requiring increase of up to 50%; might be less objections if that had been the case

Chair to Planner – What impact if any should what people have done previously have on our decision making? Specifically in terms of following Seashore guidelines regarding size?

Planner – Board should focus on what proposed and whether the Board can approve as proposed. Applicant has right to rebuild according to the bylaws and 40A Section 6. Question is: Does current proposal satisfy bylaw?

Attorney Zehnder – Looking at site plan for possible relocation. Without going into hole only option would be to slide further west, closer to Bearberry Hill, along setback. Would involve similar fill. Hope members won't require another plan with associated costs to owner and loss of time just to see another site that will be very similar with same concerns.

Chair confirms with Attorney Zehnder that he would like a vote tonight.

Vote to close Public Hearing 5-1-1

Aye – Steve Sollog, Bruce Boleyn, Anne Greenbaum, Jack Riemer, Paul Kiernan

Recused – Peter Herridge

Not able to Vote – Rich Roberts

Attorney Zehnder reminds Board that 4 votes in favor are needed to approve decision.

Began discussion of draft decision including condition.

Reviewed draft decision (p.3 & 4 of packet) & draft conditions

- 1) Add conditions
  - a) Comply with all state & local regulations
  - b) Fill –
    - i) Minimize amount brought in
    - ii) Condition that fill be of similar texture and grain size

Motion –

Steve Sollog moved to approve conditions

Bruce Boleyn second

Member raised point of order – Conditions fall after findings. Concern with Finding #12 which deals with 70.4 D 3 Landscape shall be preserved as much as is practicable. Does not believe this has been met.

- i) Site Plan Review says Board can reject plan if cannot impose reasonable conditions. Have suggested reasonable conditions. Does not seem to be any willingness to consider them.
- ii) Looking for
  - (1) Grading plan
    - (a) Amount of Fill brought in
    - (b) Amount Natural vegetation disturbed

Discussion of Point of Order

- i) Attorney Zehnder
  - (1) We've submitted complete restoration plan
  - (2) standards for board – is landscape being restored “To the extent practicable”
  - (3) The alternative to current plan we could propose to significantly reduce alteration of site would include massive retaining walls
  - (4) Can provide estimate of amount of material to be brought in/taken out
  - (5) Will members look with open mind?
- ii) Chair – reasonable question to the Board. Will having a calculation about amount of fill used & amount of fill that might need to be brought in impact your decision making? Positive response from members
- iii) Attorney Zehnder–
  - (1) clear that only have 3 votes,
  - (2) Will request continuance until March 24,2021 meeting.

Motion – To continue meeting to March 24, 2021

Moved – Steve Sollog

Second – Bruce Boleyn

Discussion –

- o Is the applicant considering some changes that will help the applicant achieve a positive outcome or are we going to be looking at the same thing in two weeks?
- o Attorney Zehnder –
  - o We believed that had addressed concerns of the Board coming into this meeting. This is new issue.
  - o We will look at alternate sites that could achieve both Ann's ability to have view, use site and keeping visibility of site down.
  - o Will bring back to Board calculations and result of looking for alternatives.

Motion to Approve Continuance – 5-0-1-1

AYE – Steve Sollog, Jack Riemer, Bruce Boleyn, Anne Greenbaum, Paul Kiernan

NAY – 0

Abstain – Peter Herridge

Unable to Vote – Rich Roberts

## **Board Action/Review**

**2020-011/PB – Samantha Perry, Hillside Farm, LLC** seeks approval of Form A – Application for Determination that Plan Does Not Require Approval (ANR) pursuant to Section 2.2 of the Town of Truro Rules and Regulations Governing the Subdivision of Land with respect to property at 23 Perry Road, Truro MA, Map 45, Parcel 131.

Ben Zehnder – Attorney

- Richard & Steven Perry, brothers, inherited land thru great grandmother
- Steven deceased, wife Clair, made plan so children can have benefit of land to continue operation of their part of the farm
- Richard – established limited partnership so his family can have benefit of operation of the farm

This proposal is a division of land to create 3 lots so that each branch of family can own land & continue to operate farm, not for purpose of development. The Perry's have operated farm & owned land since late 1800's and since then have only sold off 6 lots.

- lot 1 – 5.58 acres remain with Steven & Claire Perry's children for the operation of the farm (Hillside Farm)
- Lot 2 – 3.32 acres remain with the Perry family for conveyed to/remain with Perry family limited partnership for Richards family for the operation of the farm
- Lot 3 – 38,000+ sq feet – sold off to pay expenses

Discussion of whether this needs to be referred to the Cape Cod Commission (CCC) as a Development of Regional Impact (DRI)

- 1) One threshold for Mandatory Referral is 30 acres or more of land held in common ownership/control as of September 30, 1994.
- 2) Attorney Zehnder
  - a) If is reviewed as DRI, CCC has created standards of review
  - b) This property would be categorized as "natural resource land"
  - c) CCC requirement for development of "natural resource land" 3:1 mitigation means that to create 9-acre development Perry's would be required to set aside 27 acres which don't have & can't afford to buy
  - d) Perry's would not have the ability to meet this requirement if this goes to the CCC as a DRI
- 3) Question – does this property meet the 30-acre threshold
  - a) Attorney Zehnder
    - i) 2 separate ownerships N & S of Pamet neither of which was 30 acres of upland
      - (1) Steven & Richard acquired thru great grandmother land North of Pamet
      - (2) Steven & Richard's parents purchased land South of Pamet
    - ii) Lots 13 & 14 are not developable under Truro bylaws therefore shouldn't count toward the 30 acres
      - (1) if do add to N portion, does go over 30 acres. Otherwise, is 26+ acres.

- iii) Asking Board to make decision not to refer to CCC even if believe that under CCC regulation wetlands need to be included in calculation
  - (1) Referred to conversation with Jon Ideman Chief Regulatory Officer of CCC – calculation method for DRI is all land owned by applicant whether upland or not. It is mandatory referral. CCC would probably accept this as DRI, but don't go looking for. Don't go chasing towns if don't refer.
  - (2) There have been several times when Planning Board has not referred minor developments here to CCC as DRI
  - (3) Planning Board has authority to make its own initial decision to refer/not refer. CCC will defer to Planning Board.
- iv) If this Board votes to refer the Perrys, will have no choice but to do 1 of 2 things:
  - (1) Withdraw application – meaning can't do estate planning need to do
  - (2) Litigate with CCC as to whether wetlands should be included which will be expensive and won't help this farming family move on with their lives
- v) Asking Board to have discussion.
  - (1) Including whether donation of lots 13 & 14 to Truro Conservation Trust isn't the best use of the land.
  - (2) Asking Board to make decision that referral to DRI not in best interest of Town.
- b) Town Planner – Conversations with Jon Ideman
  - i) 30 acres means 30 acres, is mandatory referral.

#### Discussion –

- CCC materials on website do indicate DRI intention is for projects impacting more than 1 town, this does not seem to do so
- 3:1 mitigation seems unrealistic, is it accurate reflection of CCC regulations?
- Question to Planner – Can a project get an exemption from DRI? Is there a process?
  - If Board finds threshold being met is mandatory referral
  - There is a process where the Board could ask CCC if this is DRI or not?
- Attorney Zehnder – the real question is whether goes to CCC or not
  - Is hardship exemption but informed that Perry's wouldn't be entitled to this
  - If referred believe CCC will accept, then will apply 3:1 mitigation
  - Suggest getting Jon Ideman to board meeting to discuss case
    - Town Planner – Mr. Ideman did say would be willing to address Board meeting
- Board members question to Town Planner – based on your discussions with Jon Ideman – is this a mandatory referral?
  - If meets threshold is mandatory. Have been previous referrals, CCC & Mr. Ideman have not changed their opinion that this qualifies as DRI referral. Refers to memo in packet
    - Attorney Zehnder – have been other times that this Board has not referred this property to CCC,
  - Town Planner – Board could agree with Mr. Zehnder about wetlands not counting in acreage

- o Attorney Zehnder – asking Board to endorse ANR – then if CCC wants to require DRI can notify applicant

Motion to Refer to the Cape Cod Commission as Development of Regional Impact – Paul Kiernan, Second – Peter Herridge

Attorney Zehnder – asks for sense of Board so can suggest course of action

Anne Greenbaum – feels like correct & right may be different – reluctant to send

Rich Roberts – like to hear from CCC, don't see the regional impact

Steve Sollog – wetlands being preserved, but they are less valuable because undevelopable, may be swayed if donation included non-wetlands.

Jack Riemer – Very difficult decision. Base my decisions legal, safe. CCC requirements would require referral.

Paul Kiernan – Attorney Zehnder has made valid arguments. The only entity that can answer is CCC. Law requires mandatory referral. If they say not owned in common, come back for the ANR.

Attorney Zehnder – don't see anything to lose if hear from CCC but hopes board can request input rather than submit mandatory referral which would be a tragedy for family.

Town Planner – do not think board can endorse ANR & then ask CCC. Referral comes first.

Options:

1. Invite Mr. Ideman to Board Meeting
2. Ask Commission whether they think is DRI

Paul Kiernan – Point of order motion has been made & seconded

Chair propose amendment to motion to invite CCC to a meeting – Paul Kiernan (mover of motion), did not accept amendment

Public Comment on Issue

Drew Lockhart – farmer with Perry's

- o Going to CCC detrimental to family, just looking to use land for farming and for cousins, aunts/uncles to live. Raise my family in Truro.

Vote of motion to send to CCC as mandatory referral 4-2-1

AYE – Jack Riemer, Bruce Boleyn, Paul Kiernan, Peter Herridge

NAY – Anne Greenbaum, Steve Sollog

Unable to vote – Rich Roberts

Agreement to postpone all other items except 35A Higgins Hollow & Radio Tower information to next meeting

**2021-001/PB – Regan McCarthy** seeks approval of Form A – Application for Determination that Plan Does Not Require Approval (ANR) pursuant to Section 2.2 of the Town of Truro Rules and Regulations Governing the Subdivision of Land with respect to property at 35A Higgins Hollow Road, Truro MA, Map 47, Parcel 2.

Attorney – Justin Parada  
Surveyor – Kieran Healy

Anne Greenbaum – Friend of Regan and have filed Appearance of Conflict-of-Interest Form with Town Clerk. I am 1 of 7 on this Board and able to be impartial and am not recusing myself. Does anyone have question/concerns?

Kieran Healy – Land Surveyor with DSC group

- As saw at site visit, Proprietors Road visible from Higgins Hollow Road
- Looking to create 2 lots with frontage on Proprietors Road
- Need access from Higgins Hollow to Proprietors Road
- At site visit 3/9/21 showed where propose to do this and the easement over Lot 2 to service Lot 1

Chair – reminder what is before us is ANR only – those are only areas we should be looking at tonight

Town Planner – National Park Service brought to my attention that the Dirt path extension over National Park land is not easement but is revocable license.

Planner Memo outlines questions

Attorney Parada –

- ANR requires private way created before 1955,
  - Was it in existence before 1955? There are lots of records showing was a way in use to get access, to Hollow etc.
  - Exists on the ground today
  - This is sufficient for frontage
- Access
  - Dirt path, is it sufficient? Adding 1 property. 40 feet long. Is “good enough” access for project. Should be sufficient
- Improvement
  - Little extension of Proprietors Road that goes across Seashore property (not Dirt Path). Applicant has right of way agreement from Seashore (included in packet) that recognizes her deeded right to use Proprietors Road for access to her property.
  - With deeded right of way comes ability to improve the access as needed for access to your property. Therefore, she has the right to improve Proprietors Road if needed for access.



- Neither she nor Seashore want to see Proprietors Road improved. Would involve taking down large number of trees.
- She agreed not to as improve Proprietors Road as long as can use Dirt Road. With that comes right to improve it.
- Boundary agreement says has right to use dirt road, subject to rules & regulations of the town.
- Therefore, she has right to improve Proprietors Road and Dirt Path to provide access.
- We believe can use Dirt Path as exists. Board has ability to approve ANR saying that.

#### Board Questions/Concerns/Comments

- Note on Plan –Planning Board endorsement indicates only that plan is not a subdivision, does not indicate a lot is buildable or meets Zoning, Health or General Bylaw requirements
- Town Counsel – to find not a subdivision board must find
  - Way in existence prior to 1955
  - Adequate access (width, grade, etc.)

#### Chair – going to go step by step

- Was it in existence on Dec 8, 1955?
  - Delineated in 1848 plan
  - When Higgins Hollow Road went in, was Proprietors Road abandoned?
    - Applicant – No. Proprietors Way still used until at least when Sibby Davis (owner 45 Higgins Hollow Road) got his deed (1948 and afterwards). His family stated used Way into the 1950's and beyond.
  - Planner – is up to applicant to prove road was in existence on Dec. 8, 1955. Up to Board decides if that has been met.
- Proceed on assumption was a road and proceed to question of access
- Planner memo regarding access
  - If dirt road extension works for adequate access, we have another question
  - Does it provide adequate access to Proprietors Road and the property from Higgins Hollow Road
  - If ok with dirt path extension providing access to Proprietors Road, then the question is Does Proprietors Road provide adequate access?
    - If so, Ok,
    - If not, does the applicant have the right to improve it?
  - If Board agrees that was a road in 1955 and dirt road extension provides adequate access, then not subdivision
- Board Discussion
  - ask Planner to opine on what does adequate access mean?
  - Planner – that is factual? for Board to decide, based on statute

- Does the road have sufficient width, suitable grades, adequate construction to provide for the needs of vehicular traffic in relation to the proposed use of the land & for installation of municipal services to serve the property.

Discussion of was Proprietors Road a road on Dec 8, 1955

#### Board Concerns

- Currently has trees/shrubs but there are no large old trees

#### Applicant

- Shown on Plans from 1894 and later
- 1894 decision by town that it was a private way
- Still shows on ground
- Sibby Davis and others used it
- On plans & deeds including applicant's deed
- 1948 S. Davis refer to Proprietors Road as his frontage & access
- 1960 and again later S Davis acquired mortgages & documents then refer to Proprietors Road as his frontage & access. Can provide documentation.
- 2006 sustained as way by Land Court

Bruce Boleyn – Motion to approve the ANR

Peter Herridge – Second

#### Draft findings:

- Way in existence as of 1955
- Adequate Access

Town Planner – Board can find that the dirt road provides sufficient access, does not need to find that whole of Proprietors Road provides sufficient access, just the road to the property. Also, applicant must show ability/right to improve dirt path if find the existing access is not sufficient.

#### Chair – big picture

- Access to property to the west is using the dirt path extension on this property
- Access to property to the east is across same strip of land to Proprietors Road
- To deny would seem very illogical

#### Kieran –

- Adequate access is through dirt road
- Frontage is Proprietors Road – ANR does not require that the frontage be adequate it's entire length, just that the road exists

#### Vote 5-0-2

AYE – Anne Greenbaum, Steve Sollog, Bruce Boleyn, Paul Kiernan, Peter Herridge

NAY –

Abstain – Jack Riemer, Rich Roberts

Town Planner will work with applicant on updated plan with acceptable language concerning 14-foot dirt path easement.

Radio Tower emergency repair – Gary Hannah, Ron Robin

Barbara Carboni – there will be further work to discuss but tonight is just about emergency repair

- Change in ownership of radio station
- Inspection of station approximately 10 days ago, nitrogen tank almost empty. Indicating leakage in some part of cable running from transmitter in shack to antennae on tower. Leakage is above ground only.
- Coaxial cable about 17 years old. Best to replace cable, remove & inspect antennae and replace.
- Remove other antennae at 80 feet that will no longer be used
- Place plastic cap over antennae to decrease noise
- Clarification that equipment is now owned by new owners who have right to repair – Yes
- Building Inspector – no building permit needed, do need electrical inspection at completion to ensure is properly grounded
- No vote needed, goal was to inform Board and answer any questions from Board about emergency repairs.
- March 24, 2021 will be before the Board for transfer of ownership. Unclear what paperwork is needed. Will be in communication with Town Planner.

Work Session March 10 at 2:30

Motion to adjourn – Bruce Boleyn, Second – Peter Herridge

Vote 7-0

Aye – Anne Greenbaum, Steve Sollog, Bruce Boleyn, Paul Kiernan, Jack Reimer, Rich Roberts, Peter Herridge

Respectfully Submitted

Anne Greenbaum

