

**TOWN OF TRURO
ZONING BOARD OF APPEALS
MEETING MINUTES
October 22, 2020
Remote Meeting**

Members Present: Chair-Art Hultin, John Dundas, Fred Todd, Chris Lucy, John Thornley, Alternate-Darrell Shedd, Alternate-Heidi Townsend

Others Present: Atty. Barbara Huggins-Carboni, Ted Malone, Mark Nelson, Jessica Snare, Pamela Wolff, Scott Warner, Laura English, Raymond Clarke, Sheila Coleman, Mary Ann Larkin, Karen Ruymann, Patty Belanger, Louise Perry, John O'Reilly, Chris Nagle, Patrick Pepper

Atty. Huggins-Carboni read off instructions for citizens interested in joining the meeting.

Chair Hultin called the meeting to order at 5:30pm and wished to start with some opening remarks. He gave a summary of the project process, which Boards the ZBA have heard from and which Town Departments they have heard from. He read the opening paragraph, along with some other sections, from the *Chapter 40B Handbook for Zoning Boards of Appeal* to aid the Board in their discussions tonight. Chair Hultin stated that they have received testimony, review by Boards, and they have purposefully not closed the public hearing to further discussion to allow more input. The ZBA has now arrived at a point where they must consider what waivers might be required to make the project viable. He referred to the staff memorandum written by Atty. Huggins-Carboni, which lists the waivers in order of importance. The consideration of waivers is on the agenda for tonight. There is no requirement that the ZBA needs to vote on any consideration of waiver discussed tonight. Chair Hultin mentioned that the Board is in receipt of letters from the public which deserve consideration as well.

Public Hearing – Continued

2019-008 ZBA – Community Housing Resource, Inc. seeks approval for a Comprehensive Permit pursuant to G.L. c. 40B, §§20-23 to create 40 residential rental units, of which not less than 25% or 10 units shall be restricted as affordable for low or moderate income persons or families, to be constructed on property located at 22 Highland Road, as shown on Assessor's Map 36 and Parcel 238-0 containing 3.91 acres of land area.

1. Applicant's request: Relief from specific requirements of Article 14 of the Truro Board of Health regulations in excess of MA DEP Title 5 regulations.

Article 14: Nitrogen Loading Requirements

Member Dundas does not wish to add anything new at this point. He believes the due diligence done by Mark Nelson and the immediate action by the Applicant to address this specific Article gave him confidence that the ZBA has the context in perspective that they need to consider this as a waiver.

Member Shedd concurs with what Member Dundas said. He stated that this is one of the most important waivers the Board is to consider. He believes everything that's been presented to the Board by the Applicant (as far as the sewage disposal system) has surpassed all requirements required by Title V and he agrees with Mr. Nelson that the waiver of Article 14 is appropriate.

Member Lucy has no issues with this waiver request. This system is by far the cleanest, most efficient, system the Town has seen.

Member Townsend stated that her colleagues summed up her feelings as well.

Member Todd is convinced, based upon everything the Board has heard, that this will be a system that's much superior to any of the Title V systems. He pointed out that the project in Westport with the same system has numbers coming out of the system at less than 4 mg/L. He does not believe this will be detrimental to anybody downgradient.

Chair Hultin agrees that the system has shown to be superior to anything that was started with in the beginning of this process. It was made clear by the Board early on in their discussions that the proposed septic system needed to be upgraded and the Applicant has done that. One of the things that any waiver would require would be conditions. One of the key elements proposed is for maintenance and upkeep of the system, which has been reviewed and thoroughly gone over. He asked Mr. Nelson's opinion on the present state of the maintenance and testing agreement.

Mr. Nelson stated that from an operation, maintenance and monitoring standpoint he believes the proposal is appropriate. There will be monthly sampling of the effluent before it goes into the leech field (for the first year after full occupancy). If that proves that it's working well the Board of Health can look at perhaps moving the testing to a quarterly basis. There will also be two monitoring wells placed to understand the quality of groundwater upgradient and downgradient of the system. Those wells will be tested regularly as well. The contingency plan has been set up to outline what would happen if the monitoring shows there is an issue with the system. Mr. Nelson believes the steps the applicant has put together provide information for the Board of Health to work with the applicant to solve any problems. He has also asked the applicant's engineer if there is a way to prevent any significant amount of effluent getting into the ground that wouldn't meet the standard of 10 mg/L (if the system doesn't comply) and the engineer is looking into that. He stated that they've been looking at this with a standard of 10 mg/L, and as one of the ZBA members mentioned the performance of this system at another location with a similar flow is operating well below that. The system is treating the nitrogen very well and it also has a filtration system which is likely removing a number of other contaminants.

Chair Hultin stated that the Board could consider asking the Cape Cod Commission to review the new proposed septic system. Doing so would cause a delay, but he wanted to put it out there as a possibility. He would need a motion and a vote in the affirmative.

Member Thornley made a motion for the Zoning Board of Appeals to ask the Cape Cod Commission to review the proposed septic system with a response time of 20 days.

Member Lucy seconded, for discussion.

Member Shedd decided to pass on his comments at the time to see what the other Board members had to say.

Member Dundas asked that if they move to send this to the Cape Cod Commission, would review include recommendations, and are those recommendations binding? Atty. Huggins-Carboni stated that this would not be referred to the Cape Cod Commission as in a DRI (Developments of Regional Impact), it would be more like asking their staff to conduct another peer review.

Member Townsend is not against referring it to the Cape Cod Commission, but she is not sure it's necessary. She also asked why they were back at the table discussing the system.

Member Todd's concern is how quickly it could happen, as he would not like to get involved in a long process. There has been comment from the Pond Village community that this is a new, innovative system and he thinks if the Commission can comment on that, it would be useful. He would not be opposed to a review as long as it's timely.

Chair Hultin echoes those sentiments, and feels the timeliness is very important. Atty. Huggins-Carboni does not know how long this would take. She hopes that since it's a discrete review of a particular aspect of the project that it would not be that long. She can find out tomorrow with Health Agent Emily Beebe. She also wished to answer Member Townsend's question. The reason why they are back at the table is because staff (including herself) were looking at ways to address the concerns raised by the Pond Village residents. It occurred to them that the Commission has expertise and had not reviewed the new wastewater system proposed so they reached out to them to see if a review could be performed. Chair Hultin would be in favor, conditionally, with a "report back" time. He asked if the motion could be reframed to limit the amount of time before acting on the waiver. Atty. Huggins-Carboni gave a suggestion on how to phrase the motion.

Member Lucy is against going to the Cape Cod Commission as they have had a full year to chime in on this. He does not see how the Board will get a timely review from the Commission and he feels the concerns of the Pond Village residents should have been acted upon years ago, along with other Town Departments.

Member Shedd is in total agreement with Member Lucy's comments. He thinks that if anything is going to be reviewed, it would be the septic systems of Pond Village. If those systems were raised to the standards that the Cloverleaf is trying to be held to, then he feels some progress would be made on water quality in the Pond Village area. To ask the Commission to get involved after the engineers have gone over this (and come to the conclusion that they have) he agrees with Member Lucy. He is opposed to bringing the Commission in at this point.

Member Thornley does not understand the rush. He feels it's important to have as many intelligent people look at this aspect of the project.

Member Lucy knows there are approximately 20 properties along the pond itself, and out of the 20 there are only 2 with nitrogen removal systems. The majority of the properties have a regular Title V. This area has been inundated with sewage and waste. This project is not what's causing the issues with their water. It's the constant building and rebuilding in the Pond Village area, and no one is paying attention to the fact that their sewage is poisoning themselves. Putting in Title V systems is not good enough; all the systems should be nitrogen removal systems within a distance to the pond. He does not know why it's been overlooked for so many years and it's an issue that should come before the Board of Health.

So voted;

Chair Hultin-Aye

Member Dundas-Aye

Member Thornley-Aye

Member Todd-Aye

Member Lucy-Nay
4-1-0, motion carries.

Chair Hultin would like to postpone further review of the waiver of Article 14: Nitrogen Loading Requirements.

2. Article 9: Innovative/Alternative Technology (additional waiver required).

Member Shedd believes the system has been explained to the Board in great detail and sees no reason why this can't be waived.

Member Dundas agrees with Member Shedd's comment.

Member Lucy is also in agreement. He added that if they do not pass this and allow the system on the property the Board will have to go back to the original, standard, Title V. The State approved this system.

Member Thornley had no comment.

Member Townsend was okay with the waiver.

Chair Hultin is also okay with the waiver.

Member Todd agrees and is okay with the waiver.

3. Zoning Bylaw-Section 30: Use Regulations

Member Dundas views a waiver such as this a necessity and is in favor of the waiver.

Member Townsend is in favor as well.

Member Todd is in favor of waiving.

Member Lucy is in favor of waiving.

Member Thornley is in favor of waiving.

Member Shedd is in favor of waiving and thinks it's consistent with local needs. He wished to add that he visited an affordable housing project in Eastham, and after seeing the Cloverleaf plans and having the public being able to review said plans that have been presented, the Town of Truro is very fortunate to have a project like this with the aesthetics and the careful planning as opposed to the Village at Nauset Green which is very much like a housing project.

Chair Hultin has no problem waiving this.

Atty. Huggins-Carboni stated that since consensus is unanimous, there is no need for a formal vote.

4. Zoning Bylaw-Section 40.6: Growth Management

Chair Hultin does not see any reason why, however many building permits are needed, that this be exempt from the limitations of the Residential Development Limitation Bylaw.

Member Dundas is in favor of the waiver.

Member Townsend is in favor of the waiver.

Member Todd is in favor of waiving.

Member Lucy is in favor of waiving, but asked if they knew whether there would be one permit or 40 permits? Chair Hultin thought they could be clear in the waiver that this would not impact the total number of permits for a year in the rest of Town. Member Lucy also pointed out that in the bylaw it states that permits not issued within the calendar year may be carried over and be added to the next calendar year's quantity. He asked if the Board knew how many building permits are currently allowed? Chair Hultin thinks this can be an exemption from the Growth Management Bylaw and will not be counted toward the growth management limit. Member Lucy then stated that he would be in favor of the waiver.

Member Thornley is in favor of waiving.

Member Shedd asked if, for some technical reason, it was to come before the Building Commissioner and additional permits weren't allowed would this be something a person could bring before the ZBA and the Board would have another chance at a waiver? Chair Hultin clarified that this was regarding the next applicant, and he said he thought they could. Member Shedd stated he was in favor of waiving as well.

Chair Hultin is in favor of waiving.

Chair Hultin noted the time and reminded the Board that they still needed to hear public comment. He polled the Board in terms of moving forward with other exemptions. He thought it to be a bit complex unless they found a way to group all the remaining waivers together.

Member Thornley thinks that each one of the waiver requests, when you put them together, describe the whole design and he feels that they can't go against any of them. He feels they should all be waived.

Member Dundas agrees with Member Thornley's statement.

Member Townsend agrees as well. She thinks they've had a couple revisions of the overall design of the site plan and she feels voting on it as one, and waiving as one, makes sense.

Member Todd agrees and would like to waive them as a batch as they are integral to the design.

Member Lucy is in favor of waiving as a whole.

Member Shedd is in favor as well, but thinks the Board got away from Chair Hultin's original question which was; Does the Board want to plow ahead? Member Shedd is in favor of doing that if the Chair would grant a 2-minute recess.

Chair Hultin is also in favor of waiving en masse.

A five-minute break was taken at 6:52pm.

The meeting resumed at 6:58pm.

Chair Hultin started the discussion, stating they had waiver 50.2 that should be quickly dispensed with.

5. Section 50: Area and Height Regulations; 50.2: Building Gross Floor Area for the Residential District.

Chair Hultin personally feels that Section 70: Site Plan Review starts to get into the complexities of the Planning Board, and he wouldn't mind reviewing their comments and possibly taking that up at the next meeting. Discussion continued regarding the waiver of 50.2.

Chair Hultin is in support of the waiver.

Member Dundas is in support of the waiver.

Member Shedd is in support of the waiver.

Member Townsend is in support of the waiver.

Member Todd supports the waiver as well.

Member Lucy supports waiving it, with the reminder to the Planning Board to please abide by what they have placed in the bylaws for 50.2F.

Member Thornley supports waiving as well.

Atty. Huggins-Carboni wished to clarify that there was consensus as well on the waiver of all the dimensional requirements. Chair Hultin confirmed in the affirmative.

Public Comment

Chair Hultin stated that the first public comment letter was from Pamela Wolff. Ms. Wolff stated she didn't have any other public comment to make as she believes people already know what her interests are and what her questions have been. She is still concerned about water quality in Pond Village and the height limitations of the project.

Next was a public comment letter from the residents of Pond Village. Mr. Scott Warner wished to speak. He stated that the residents of Pond Village are unequivocally in favor of affordable housing in Truro and in their neighborhood. The residents also supported the acquisition of the Cloverleaf parcel, and development of the 12-16 units that was originally proposed. They believe that the current plan for the Cloverleaf parcel represents a threat to their health. He wished to respond to a comment made by a

ZBA member earlier in the meeting. If he heard correctly, the ZBA member stated that Massachusetts has approved the proposed wastewater treatment system. It was Mr. Warner's understanding that the State has placed the system on a list of pilot systems. He brought up a concern that a minimum of 50 systems of this model have to be installed and evaluated for at least 3 years to achieve in-provisional status use. The applicant has only provided 3 such systems, not 50. In their letter to the ZBA they pose a number of questions and concerns which they hope will be shared with the Cape Cod Commission.

Laura English read a statement regarding the duty of the ZBA to protect the residents, and those resident's concerns with the proposed pilot septic system.

Raymond Clarke wished to share some points with the ZBA.

- As the process enters a final review phase, it does so without a Town Manager and a Town Planner overseeing the complexities of the project. He feels the peer review process is not complete, particularly in regard to the downgradient health impacts. A more comprehensive peer review process is essential to garner confidence.
- The ZBA should not grant any waivers unless the applicant produces a new plan that will meet the 5 mg/L standard.
- There is a way to achieve both affordable housing up the hill and safe water in the village; reduce the number of bedrooms and make them all truly affordable.

Sheila Coleman wished to discuss something mentioned in a prior meeting where it was insinuated that the number of signatures the Pond Village residents had been able to garner was a small percentage. She challenged the math that went into that impression and then challenged the impression itself. She also does not believe any waivers should be passed until the Board of Health-Pond Village water study results are received, and comments from the Cape Cod Commission are heard.

Member Shedd wished to address a couple of the points mentioned. The system is very safe and falls within Title V approval regulations. He thinks the Cloverleaf project wants to be held to a higher standard than what the State requires and what's required of people owning their own systems. He does not understand that, and he also does not understand, as a ZBA member, what their authority is to supersede approved standards and regulations. He was never aware of any water quality problems in the Pond Village area until the residents brought it to his attention. The Cloverleaf project is at least a year away, so to hypothetically be blaming the Cloverleaf for problems that already exist requires more thought on everyone's part.

Mary Ann Larkin added that they never knew anything was wrong with their water until this group of scientists and doctors in Truro investigated it.

Karen Ruymann noted that one of the comments that prompted this was when Health Agent Beebe stated they had 20 samples from 2006 spanning about 10 years and the information was spotty. Ms. Ruymann started asking her neighbors if they knew their nitrate levels, etc. It was suggested that people in the neighborhood get a baseline water quality test so that they would know, years down the road, if there were changes. She urged the Board to finish this project with thorough investigation.

Member Todd reiterated that the ZBA is not blaming Pond Village for the water quality. The Route 6 runoff is a major contributor and it was noted in the 2014 Weston and Sampson water study for the entire Town that there were concerns there. He added that with the most recent testing of the water in the Pond Village neighborhood, 80 percent of the samples came back at 5 or less which was within the

range that is aimed for. He doesn't understand the level of panic all of a sudden. He objects to people stating that the equivalent of 3 swimming pools of waste will be coming from the Cloverleaf. If he takes the 120 dwellings (in the Pond Village neighborhood) and assumes 2 bedrooms at 220 gallons per day, per year, that's 12 million gallons. If there are 3 bedrooms, that would be 18 million gallons. Everything that would come from the project would be treated. At the worst, the effluent would be at 10 mg/L, where with a septic system it could be from 26-80 mg/L. He thinks people should be careful with the numbers being thrown around.

Laura English asked why wouldn't the Cloverleaf project be held to a higher standard? Chair Hultin stated that it is being held to a higher standard.

Raymond Clarke stated that where there is already a difficult situation with the nitrate levels in Pond Village, we shouldn't be adding to that by not holding the Cloverleaf up to a higher standard.

Patty Belanger wanted to underscore that given the apparent challenges that the residents are discovering in the vicinity, the notion that they would wish to be a part of a pilot, or think that it was appropriate, defies reason. Considering this is not a proven system and is a system which will place a burden on the water system which the residents depend upon, she thinks their objections are not surprising. She thinks the current study should be seen through and no waivers should be approved until that time.

Chair Hultin stated that he understands there is fear of increased nitrate accumulation in the well water. He asked Mr. Nelson if there was any evidence of that actually being the case? Mr. Nelson stated it was a complicated answer. He proceeded to explain the plume and concentrations. He also added that the fact that some homes are seeing elevated nitrogen levels is probably from a septic system in the neighborhood because above 5 mg/L will not be from stormwater runoff, and very unlikely it's from fertilizer. It's the interaction between a septic system and a nearby private well. The technology chosen for the project is under pilot approval, but current data shows it's working fairly well and coming out below 10 mg/L and is actually close to 5 mg/L. The additional filtration that's proposed for this system is going to remove many of the other constituents that can affect drinking water quality. Chair Hultin asked if there could be a plan for another monitoring well on the other side of Route 6 to track nitrates? Mr. Nelson stated that a monitoring well in that area could be a possibility.

Louise Perry clarified that the residents were not blaming the Cloverleaf for the issues they have in Pond Village. They are concerned that should something happen it will make the Pond Village area worse. She asked, since the system is a pilot system, what happens should it fail? What will the Town do to protect them? Chair Hultin stated that there is a management and operation protocol in place. John O'Reilly explained that they have provided the Board, and Horsley Witten, with a contingency plan that would be approved by the Board of Health after a full review by the Health Agent and the Board of Health itself. Mr. O'Reilly briefly summarized the steps which would be followed in addressing a problem. During the monthly testing cycles for the first 12 months (after full occupancy) if there is an exceedance of nitrogen or any of the parameters, the first person called besides the operator would be the Health Agent of the Town. It would be the responsibility of the owner of the facility to make whatever necessary repairs to bring the system into compliance. He believes that Pond Village residents would be notified once the Board of Health/Health Agent were notified of a problem.

Chris Nagle is concerned about his health and others. He sees two separate issues, one being the problem in the Village. He is asking that this problem be studied further. With the existing issue of the

higher levels of nitrates in their neighborhood, how can there be a discussion about any nitrates being added until the problem is addressed.

Patrick Pepper has been testing his water for the past couple of years. Their levels have come in at 4.7 and 3.6. Barnstable County did not flag these numbers. Mr. Pepper had no idea that there were any health concerns related to those numbers. It appears, from the science, that the level of 10 is inadequate to protect them. The neighbors of the Village are here because they didn't get the information from Barnstable County. He hopes that clarifies why the people from Pond Village are attending these meetings.

Mr. O'Reilly read a passage from the Board of Health Regulations that essentially gives the Board of Health the power to shut the system down and require the waste to be pumped offsite.

Chair Hultin made a motion to continue the Public Hearing 2019-008 ZBA to November 5, 2020 at 5:30 pm.

Member Thornley seconded.

So voted; 5-0-0, motion carries.

Respectfully Submitted,

Noelle L. Scoullar

