

**TOWN OF TRURO
ZONING BOARD OF APPEALS
MEETING MINUTES
July 16, 2020
Remote Meeting**

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

Members Absent: John Thornley

Others Present: Town Planner-Jeffrey Ribeiro, Atty. Barbara Huggins-Carboni, Principal, Horsley Witten-Mark Nelson, Ted Malone, John O'Reilly, Susan Howe, Jessica Snare, Kevin Grunwald, Steve Sollog, Regan McCarthy, Jack Reimer, Ron Fichtner, Deborah Best-Parker, Daniel Holt, Anne Greenbaum

Chair Hultin called the meeting to order at 5:30pm.

Town Planner Ribeiro read off instructions for citizens interested in how to join the meeting.

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.

Town Planner Ribeiro started off by stating they had some technical difficulties during the meeting of July 9, 2020. When they concluded that meeting, Horsley Witten Group had presented their second peer review report which covered the wastewater system as well as storm water and erosion control. Mr. Nelson was back and would be doing his presentation again, from the July 9th meeting. After that, the applicant will be allowed to present. Susan Howe, Chair of the Commission on Disabilities will present comments from her Board. Comment from the general public will be held afterward.

Mr. Nelson introduced himself. He stated that Horsley Witten has been doing the peer review of the engineering plans and design. Tonight, he will talk about the wastewater plans/upgrades/proposals made by the applicant, and then he'll talk about where they stand with storm water design and erosion and sedimentation control. Mr. Nelson pointed out that they were in the middle of discussing wastewater when the meeting was postponed. He will go over what he talked about and wrap up that portion.

He started by talking about the request from the applicant for the waiver from the Town's nitrogen loading limitation regulation which was adopted by the Board of Health. That regulation says that the Title V State Septic regulation requirements for nitrogen sensitive areas apply across the Town of Truro. Wastewater flow is limited to 440 gallons per day per acre. Under Title V an acre is considered 40,000 square feet instead of a full acre. The applicant has submitted a proposal for a bio-microbic wastewater treatment facility which they believe will meet the 10 milligrams per liter. If the system proposed is installed, and is similar to one installed in Westport, it might be roughly 40 percent below the overall nitrogen load. Mr. Nelson looked at this in two ways;

- How does it play with the waiver, which was requested from the Board of Health Regulation?

- What does this proposed wastewater treatment facility mean for downgradient properties that have their own private well?

Mr. Nelson continued. If you assume that the nitrogen loading limitations of Title V would still apply to this site, the guidance that's included in Title V state that if you have a facility with a wastewater treatment flow over 2000 gallons per day (in this case the wastewater flow is close to 7500 gallons per day) you can comply with those nitrogen loading limitation regulations if you can prove that you will meet a 10 milligram per liter concentration at the property boundary on the downgradient side where the septic system discharges its effluent. In this case, if the system meets 10 milligrams per liter before it goes into the ground it would meet that requirement. Horsley Witten's calculations show that by the time the effluent reaches the property boundary it will be closer to 9 milligrams per liter. If you assume the plume is going to cross Route 6 to the off-ramp is, by the time it meets the property where there might be a private well the concentration would be 7 milligrams per liter.

The other thing Mr. Nelson looked at was the nitrogen load and compared what would be allowed under the Board of Health regulation vs. what the applicant was providing. If you assume 440 gallons per day per acre at 35 milligrams per liter (a standard septic system) the overall nitrogen load would be 199 pounds of nitrogen per year. If the applicant meets 10 milligrams per liter with its full flow the overall nitrogen level would be 228 pounds per year. If it meets a standard of 8.5 milligrams per liter that will be equivalent to what the Board of Health regulation would allow in terms of overall nitrogen load. If it goes below that, then it will be less. If the system proposed is installed, and is similar to one installed in Westport, it might be roughly 40 percent below the overall nitrogen load.

Another topic Mr. Nelson wished to touch upon was some of the questions and concerns raised by people about individual private wells that are located along Pond Road and the area to the southwest, and downgradient, of this parcel. The question has been; If my well already has elevated nitrogen levels and this system is put in, what is going to happen to my private well? Mr. Nelson stated that each individual private well is capturing water from either its own parcel or an upgradient parcel. Part of that is dependent on how deep the well is, and where the groundwater is coming from that enters that well. They know that the water is most likely coming from the north northeast, some people have mentioned elevated levels of nitrogen within their drinking water wells and that's likely due to existing septic systems in their neighborhood.

The applicant has proposed monthly sampling for the first year, and quarterly sampling after the first year. A recommendation Mr. Nelson made in the letter was that monthly sampling for a year should include 12 months from when the community is fully occupied, or 80% occupied.

A question for the Board's consideration is if the system does not meet the 10 milligram per liter standard, what happens then? Is there a contingency plan that would be put in place to be able to address that?

Mr. Nelson continued with the stormwater management and erosion/sedimentation control issues. Horsley Witten provided a series of comments in their initial letter. John O'Reilly and others have worked to address those. Horsley Witten has requested details for some additional information on the hydrologic modelling that was done for the facility.

On the erosion and sedimentation control Horsley Witten issued a third letter after getting more information on that from the applicant. They have received a lot of information on how the property will be managed to make sure that during construction things won't erode. Horsley Witten is asking that the information be made more specific to this property. They need to see a plan that shows what erosion and sedimentation control practices will be used across the entire property.

Chair Hultin opened the meeting to the Board for questions. Mr. Nelson answered each as they were presented.

Chair Hultin then moved the meeting along to the applicant's presentation. Mr. Malone thought it would be best if John O'Reilly responded to questions about the septic treatment as well as speak a little about stormwater and erosion management.

Mr. O'Reilly stated that they picked this technology, and one of the items they liked was the varying controls that the system does provide them. As far as the pH in the wastewater, that's one of the first things a treatment operator will check when they come to the site. Another he likes about the system is that it's split into two barriers, a dual-train process. He then addressed the down gradient issue. They will be proposing at least three monitor wells. People who review that data will be able to tell if the plume is coming from the Cloverleaf and what the concentration of the nitrogen would be in that plume. If the product does not meet the 10 ppm what typically is done is the system is completely diagnosed. Any faulty pumps, switches, valves and so forth would be replaced. If the system continues to not perform as anticipated, not only will the local Board of Health be involved, but the DEP will also be involved. Worst case scenario would be an additional polishing chamber would need to be installed. With regards to the storm water, Mr. O'Reilly has read Mr. Nelson's review. There was concern about the sizing of the swale. He can conform that and readdress the contributory areas. The setback to the leaching facility can be rectified by sliding the leaching facility further back in between the two buildings. With the erosion control plan, they can extend it and develop a plan that would go along with the permit plans the ZBA already has. The concerns can be addressed. It's just a matter of what level of drawing and detail the Board is going to look for at this point in time, or whether it would be something that would be dealt with prior to a formal permit application.

Mr. Malone wished to address comments regarding operations and how it's going to be paid for. On an ongoing basis there are replacement reserves funded on a monthly payment basis along with mortgage payments and set asides for taxes and insurance. There are also funds set aside for long term replacement reserves. There is also a requirement for an up-front capitalization operating reserve of \$296,000 to be set aside for any kind of operating difficulties. Mr. Malone continued, stating that one thing not mentioned is that they have a control room, a 12x12 structure, off to the West of building 21 that will be a command center for the operations of the system.

Mr. Malone wanted a chance to respond to a June 29th, 2020 communication called a *Statement of Cloverleaf Housing Development* submitted by Mrs. Joan Holt along with other signers. He wished to clear up some inaccuracies in that statement and provide his response and rebuttal. Chair Hultin stated that because the Board did not have the physical document, he felt that they should keep this section as part of the public comment period. He would like to make sure he has all the Board member's comments before moving forward with addressing individual public comments. Chair Hultin would like to move to the presentation by the Commission on Disabilities first and then take public comment.

Susan Howe, the Chair of the Commission on Disabilities, read a statement which the Commission worked on to submit to the ZBA. Member Todd thought it would be helpful to hear from the development team on their response to some of what was mentioned in the statement. Member Shedd agreed with Member Todd and also had thought that the project met all ADA requirements as he knows there is a percentage of housing which needs to be as such. Chair Hultin questioned whether some items fell under the purview of the ZBA or not. Atty. Huggins-Carboni stated the Board could impose additional conditions, being mindful that this is a 40B principle. The Board cannot impose conditions on subsidized housing that would not be imposed on non-subsidized housing. There is some leeway for a Board to impose a more rigorous condition, but it's always tempered by the principle of not treating the project differently than it would be treated if it were a market rate project.

Mr. Malone reviewed what they are proposing in terms of the total number of units and what the requirements are. As a thirty-nine-unit development, 5% of the units have to be fully ADA compliant. Every unit in the 15-unit apartment building is going to be accessible. Mr. Malone then asked Ms. Snare

to further elaborate on certain items regarding ADA requirements. Ms. Howe was reassured after hearing what Mr. Malone and Ms. Snare stated.

Chair Hultin let Mr. Malone continue the discussion, focusing on the letter received by Mrs. Holt. Mr. Malone stated that one item in the letter questioned appropriateness of building #21 as multi-family housing. There is a contention that over-crowded housing leads to the spread of Covid-19. He explained the difference between over-crowding and multi-family density. He also addressed the question posed in the letter of how open this process has been. References to the septic issues and water quality issues, he feels, have been more than adequately addressed by the peer review. Mr. Malone also touched upon the question in the letter regarding financial gain. He stated this project is being done under an extremely regulated environment. Only six of the units in the development don't have an overarching affordable housing restriction. Under 40B, the entity that owns the housing has to be a limited dividend organization. That places a cap on equity to 10% throughout the life of the property. Member Shedd added that Senator Cyr wrote a response to the letter Mr. Malone referenced which places the letter into a real community perspective as to what Sen. Cyr feels the letter represents. He added that the point Atty. Huggins-Carboni made about the conditions that can be imposed is very important. He feels that should answer a lot of what the public might ask of the Board. Member Lucy stated that there have been meetings over the past year or two on the development of this project that were open to the public for input. He feels it's unfair to the applicant for someone to say that this has not been an open process (as was mentioned in the letter by Mrs. Holt). Chair Hultin then opened the meeting up to public comment.

Caller-Kevin Grunwald

He addressed a couple of the issues raised in the letter by Mrs. Holt and he wished to echo what other people have said; this has been a very open and public process from the very beginning.

Caller-Steve Sollog

He stated that the open hearings which have been discussed were mostly presentations. Open forums were something that the Planning Board did to rely on the Town to voice its opinion.

Caller-Regan McCarthy

She wanted to respond to a particular issue that came out of the peer review, which she referred to generally as the question of precedence. She's concerned of two precedents this project may be setting and she asked that the Board consider them.

- The first question has to do with the change in Town standard from 5ppm to 10ppm. In her own research she could not find when the Board of Health made that change. If allowed, this could set a precedent for future construction/development. Has the ZBA, in discussing this project, considered what the implications may be of said precedent on other development?
- Historically, Truro has not had apartment buildings as a form of construction. Is this also setting a precedent that the Town will have to deal with?
- The proposed IA system is basically untested. Will there be a contingency plan in place as Mr. Nelson suggested?
- Is it wiser to scale the project down rather than experimenting with the safety of our water?
- Based on what she heard tonight, is it necessary/wise for the Town to get baseline levels of nitrogen loading from nearby neighborhood properties before development begins?

She also wanted the ZBA to think of ways to move forward without any labeling of anybody. The community has the right to ask questions without being labeled bad actors in the issue of affordable housing development.

Chair Hultin responded by saying that each application with the ZBA is taken as a complete separate matter and no precedent will be set by any choices, decisions or conditions set.

Caller-Jack Reimer

He wished to stated that he believes it's in the public's interest to provide housing to people of all income levels and to promote the health, safety, convenience and welfare of the inhabitants of Truro. The Annual Town Meeting of 2016 Truro voters approved Article 20 to acquire the Cloverleaf property for the purpose of developing affordable housing. The goal attached to that article stated that the Select Board would recruit a developer for between 12 and 16 units. Mr. Riemer pointed out that a letter received from J.M. O'Reilly to Town Manager Palmer stated that the property was not in Zone 2 and there would be no restrictions on the number of bedrooms. In the letter, it also stated that ground water was not going to be an issue regarding the sewage system or full height foundations. He states that it is upon this information that there is now a proposal for 39 units. If the project was at 12-16 units, it would be at a low cost served by private wells and conventional sewage systems. He wonders if the amounts of money spent secure infrastructure which does not exist would be better served in a 12-16-unit complex? Mr. Reimer proceeded to read some sections out of the 40B handbook. He asked Chair Hultin to schedule a work-session as a reasonable accommodation to pursue valid relevant issues which are in the public interest.

Caller-Ron Fichtner

Mr. Fitchner wished to go back to discuss the topic of nitrogen loading. The nitrogen load will be 228 pounds according to Horsley Witten's calculation. He asked, since the effluent is four times the 440, why isn't the nitrogen deposit into the ground water 4 times what the 440 calculation is? Mr. Nelson stated that the difference is the level of treatment of the wastewater effluent before it's entering the ground. The flow from the treatment plant will be 3 to 4 times the flow that would be allowed under the Town's regulation, but the amount of nitrogen is about 3 times lower than what would be allowed from a traditional septic system.

Caller-Deborah Best-Parker

Ms. Best-Parker read a letter into the record by Dr. Fred Ryman, regarding the Cloverleaf project.

Caller-Daniel Holt

He wished to underscore what a couple people had said already, regarding the importance of trusting the good faith of people who raise questions. He feels that the notion that you can't question a project without being against its premises is false. Mr. Holt also wanted to point out that one of the tragedies of the Pandemic has been that Public Health officials and Epidemiologists have been warning us about the dangers of this coming down the pike, and things we can do to prepare ourselves for it. We confront a similar situation in that scientists say we will soon be facing a climate change crisis. With that in mind, he wonders why this project is not being put forth as a carbon neutral project.

Caller-Anne Greenbaum-Commenting as Chair of the Planning Board

The Planning Board is in the process getting two documents to the ZBA. One is a response to the revised waivers, the second is an updated list of any outstanding comments that they had made earlier and some new comments based on the revised submission and the second Horsley Witten review.

Caller-Jack Reimer

He had a question involving a Supreme Court case decided in 2019. It involved Maui County which was injecting wastewater from a treatment plant into the ground water that eventually ended up in the

Pacific Ocean. Mr. Reimer believes the Supreme Court, in their decision, included language which would associate an upgradient point-source, such as the Cloverleaf, as being assumed to contribute to any further contamination downgradient. He asked if Town Counsel could express an opinion on that. Chair Hultin stated that his assumption that there is contamination is unproven and asked if Town Counsel had any response. Atty. Huggins-Carboni did not have a response at this time because she does not know that the decision impacts the regulatory process here and the regulations that this Board needs to get advice from its consultants about whether there's compliance. She would like to look into it and talk to Mr. Nelson about whether he's seen any application of this decision within the regulatory context in Massachusetts. Mr. Nelson states it's a very different situation in Maui with fractured bedrock then what we have here on Cape Cod. The level of treatment we're looking at, and the impact to downgradient receptors doesn't change if it's regulated under the Clean Water Act.

Caller-Regan McCarthy

She wanted to thank the ZBA for their hard work. She feels there is an unanswered question which is, what is the safe level of nitrates, and nitrate loading? She wonders if there is some group, or process, that will inform the ZBA about what really is a safe level in a system like this in which the surrounding community is on well water. Town Planner Ribeiro stated that while they'd like to hear from these groups, the Board has to use the scientific data from Horsley Witten.

Discussion was held regarding the next Public Hearing meeting date. A date of July 30th was settled on.

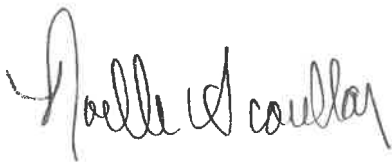
Atty. Huggins-Carboni asked the Board to think about (either tonight or at the next meeting) whether they want more detailed plans on erosion control than the applicant has provided. She stated that Mr. Nelson pointed out there is not a lot of detail, and Mr. Malone has pointed out that his intention would be to provide the detail later. If the Board thinks it's important enough to see more detailed plans now, the Board should tell the applicant that. Chair Hultin stated it's pretty clearly indicated on the plan in some regards. He wonders if the remaining areas can be covered in a narrative. Chair Hultin did say it was one of the objections that should be addressed. His question is, what is the clearest way to address it? Mr. O'Reilly stated he could take what they've already presented to the Board, and reviewed by Horsley Witten, and enhance with more of a project protocol narrative. He does not, however, know if that will meet with the favor of the Board. With regards to drainage, the questions raised in the second peer review can be easily addressed. Mr. Nelson stated that they are still going to want to see where erosion control is going to be used across the entire property, as there are many sensitive areas.

Member Dundas made a motion to continue the Public Hearing-2019-008-Community Housing Resource, Inc. to Thursday, July 30th, 2020 at 5:30pm.

Member Lucy seconded.

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

Meeting Adjourned at 8:38pm.



**Respectfully Submitted,
Noelle L. Scoullar**

