

**Truro Board of Health Minutes**  
**June 30, 2020**  
**4:30pm - REMOTE MEETING**

**Members Present:** Chair Tracey Rose, Vice-Chair Jason Silva, Clerk Peter Van Stratum, Member Tim Rose, Alternate Member Meredith Goff

**Others Present:** Health Agent Emily Beebe; Town Manager Rae Ann Palmer; Town Counsel Gregg Corbo

Chair Tracey Rose called the meeting to order at 4:30PM.

**Motion:** Mr. Van Stratum moved to approve the procedure to open the executive session as stated in the meeting notice held on June 30, 2020 for the purpose of discussing litigation strategy in the case of Town of Truro V. Delgizzi, Southeast Housing Court Case #19H83CV0357CI as the chair declaring that discussion of the matter in an open session would have a detrimental effect on the Town's litigating position; seconded by Ms. Rose; **Vote: 5-0-0, motion carries.**

**I. PUBLIC HEARING: Truro Motor Inn, 296 Route 6:** Public hearing relative to the dwelling units located in the Truro Motor Inn, 296 Route 6, Truro Massachusetts.

1. In accordance with Title 5 of the State Environmental Code, 310 CMR 15.410 to 310 CMR 15.413, to consider an application for a variance from the following provisions for the installation of a new on-site septic system to serve the property:

- 310 CMR 15.211 – to reduce setbacks to lot line and foundation;
- 310 CMR 15.248 – no reserve area provided; and
- 310 CMR 15.240(4) – 44% reduction in soil absorption system.

2. In accordance with Sections 32A to 32E of Chapter 140 of the Massachusetts General Laws, to determine whether the license to operate a motel should be issued for the 2020 calendar year.

Truro Town Counsel Gregg Corbo opened by explaining that the Board is hearing two matters: First, an application for approval of a septic system designed for the facility with three variances; the proposed variance application includes an alternative system as defined by Title 5. Attorney Corbo asked the applicant to confirm if all abutters have been notified of the proceedings; Jason Ellis of J.C. Ellis Design confirmed the abutters had been notified and stated he would forward the green cards on July 1<sup>st</sup>. Attorney Corbo responded that the receipts will need to be received before the Board can take final action and any decision the Board reaches can be contingent upon a showing that abutters were properly notified.

Second, to determine in accordance with Sections 32A-32E of Chapter 140 of M.G.L. whether the license to operate a motel should be issued for the remainder of calendar year 2020.

Attorney Corbo suggested the Board proceed with the septic application and then move to the motel license application.

Ms. Rose stated that the meeting will be held under Roberts Rules of Order, and she expected proper conduct and professionalism of all participants; she asked that all questions and comments be directed through the Chair.

Mr. Ellis provided a summary regarding the proposed septic system; he stated he was aware there were issues with the DEP approval of the alternative septic system technology that he chose. He stated that if the proposed system is not approved by the DEP he has an alternate I/A design for the system. He acknowledged the question about the number of bedrooms and discussed the details and location of the proposed septic system and the requested variances.

In reference to email correspondence from Brian Dudley of DEP-SERO, Attorney Dina Browne, who represents the applicant, asserted that the Truro Motor Inn had always contained 44 bedrooms and 36 units. Attorney Browne has requested the documentation supporting the DEP'S position that the property has 36 bedrooms. She discussed limiting the occupancy of the units and argued that limiting the septic system to 36 bedrooms would accomplish what the DEP wants in limiting the number of occupants to 72. The applicant would like to continue moving forward with 44 bedrooms at the property with limited occupancy.

Ms. Rose asked what the occupancy would be limited to. Attorney Browne responded that occupancy would be limited to under 50. Ms. Rose clarified that the septic system application reflects 44 bedrooms. Attorney Browne said that people are relying on an email from the DEP, without proof, for the bedroom count. The Agent commented that Title 5 assumes 2 person occupancy per bedroom and therefore limiting "occupancy" would not align with Title 5 ; further, in response to an earlier statement the Agent clarified that Municipal water is not available at this site, and that Truro Board of Health regulations require all Truro properties meet the nitrogen loading standards of Title 5 regardless of the presence of Town water.

Mr. Silva discussed the repeated issues with lack of licensing, trouble obtaining documentation about the septic system and how the property ultimately will be used and was not in favor of approving the variance requests.

Attorney Browne replied that the septic system is designed for the building that is there and has been in the same configuration since 1965. Attorney Browne added that she has a real problem with the town voting on the matter based on an email from the DEP without any supporting documentation. She reasserted the position of the applicant that the septic design should be based on 36 units, not 36 bedrooms.

Attorney Corbo reiterated that the purpose of the meeting was to hear an application for a variance from the provisions of Title 5, and that the burden of proof in a variance proceeding is on the applicant to demonstrate that they are entitled to the variance they are seeking. The applicant is seeking to install an alternative technology system, which the Board cannot approve unless the type of system has been approved by the DEP. The system proposed by the applicant is not in the DEP database, and has no approval letter and thus the applicant has not met their burden of proving otherwise. With respect to the design flow, again, the burden of

proof is on the applicant; the applicant has provided no evidence as to what the design flow of the existing system is. In fact, there is no evidence to suggest what type of system it is, when it was put in, what it was designed to handle, or whether it's even functioning properly. The applicant had been ordered to provide a full Title 5 inspection, but chose to upgrade in lieu of inspection. The applicant cannot now sit back and say there is insufficient evidence because they refused to do an inspection as Ordered by the Board of Health.

The Property is served by a non-community public water supply well that is approved for 36 bedrooms, per the DEP, and in the absence of evidence to the contrary, anything more than that is considered an increase in flow. Because the application is within the Zone 2 of its own Public water supply well and in an environmentally sensitive area, there can be no increase in flow.

Attorney Corbo opined:

That the applicant has not met their burden of proving either :

- that this is a system that is approved for use in Massachusetts, or,
- that they are not proposing an increase in flow.

He stated that it was not within the province of the Board, when considering a variance, to consider potential future changes in circumstances, such as forthcoming public water, etc. The burden is to show that the applicant is proposing a system that can be installed in a manner that is at least the equivalent of the environmental protection of Title 5.

Further, because this is a variance request, the Board is entitled to consider the actual impact the decision will have on the environment and public health. The Board has been trying to get the system upgraded and had to resort to going to court in order to even get the applicant to the table with a proposed plan. The plan is unsatisfactory, and the applicant suggests that the Board can approve the plan allowing 44 bedrooms and just be subject to the owners promise that they will limit it to something less.

Mr. Van Stratum agreed with Attorney Corbo's assessment and stated that to proceed any further would be a waste of time.

Ms. Goff appreciated the clarity Attorney Corbo provided and felt the Board had enough information to move forward.

Attorney Browne requested to withdraw the application in order submit a new application and plan.

Ms. Rose asked Attorney Browne if she was making an official withdrawal of the application. Attorney Browne confirmed and said the applicant would submit a new application with an approved system. Ms. Rose expressed concern that a withdrawal of the application would lead to more significant delays. Attorney Browne alleged that after the town filed litigation, the applicant moved quickly to make repairs and file plans. Attorney Browne also suggested that the delays from March 3 to the present were the fault of the town and had nothing to do with the applicant.

Attorney Corbo responded that the owners of the Truro Motor Inn were issued an Order to Correct on June 16, 2019, with an order to inspect the septic system. While there has been

some delay due to COVID, the applicants septic designer Jason Ellis was emailed by the Health Agent on May 27, 2020 asking for the approval letter for the alternative system he proposed and for any documentation concerning the permissible size of the public water supply; none of that is forthcoming. Mr. Ellis should have been aware that a DEP approval letter is a necessary prerequisite to an application, and even after the Agent expressly asked for it, a month passed and nothing was received until the date of this meeting. While things may have moved more aggressively since the lawsuit has been filed, the reality is that nothing happened until the lawsuit was filed. In addition, we still have the issue of a failed septic system and individuals continue to occupy the property in a failed system; there has been no suggestion by the applicant that any interim remediation will be done in order to protect public health and the environment until a new system is put in.

Attorney Browne stated there was no evidence of a failed system. Attorney Corbo responded that the applicant refused to do the septic inspection – you can't refuse to do an inspection that you're ordered to do and then say there's no evidence.

Mr. Ellis said that the septic components that are there won't pass inspection because they're cesspools, which automatically fails inspection in the town of Truro, and there's no sense doing an inspection knowing it will be an automatic failure, which is why the DelGizzi's decided to move forward with the new design. Mr. Ellis said he had not seen any evidence of hydraulic failure or an imminent health hazard.

Discussion occurred regarding the applicant's motion to withdraw.

**Motion:** Mr. Van Stratum moved to deny the application for variances on the grounds that the application fails to include the documentation needed to approve, including DEP approval of the alternative system, and also on the grounds that the system proposes an increase in flow in an environmentally sensitive area in which an increase in flow is not allowed and, for the final reason that the application fails to demonstrate that the proposal would result in an equal degree of environmental protection as a traditional non-varianced system would allow for.

Attorney Browne interjected to say that if that's the way it goes, this will be appealed, and the litigation will be extended even further versus just letting the applicant resubmit the plans. Attorney Browne asked Mr. Ellis how quickly he could get new plans done. Mr. Ellis responded that he could get them done within a couple weeks, but the big issue is the bedroom count and can't do much until that's figured out;

**Seconded by Mr. Rose; Vote: 5-0-0, motion carries.**

Ms. Rose offered the opportunity to Attorney Browne to present a basis for why the motel license should be granted.

Attorney Browne discussed the historical use of the Truro Motor Inn as residence for people in the community who couldn't afford to live somewhere else; the lack of an apartment By-law in the town of Truro, and the lack of affordable housing in Truro. She said due to the lack of an apartment By-law, that there is no other way for the DelGizzi's to operate other than as a

motel. Attorney Browne requested that the Board issue the license to allow the applicant to continue to operate for the benefit of the people of the town.

Attorney Corbo discussed the motel license, which is for temporary, transient use. The proposal before the Board is essentially, to approve under the guise of a motel license, an apartment complex. The applicant is proposing that the units will be occupied on a permanent or semi-permanent basis. The Board has not received copies of any suggested leases. The rooms are not adequately sized in accordance with the regulations of the Truro Board of Health. Specifically, the regulation that pertains to the size of the units and the use of cooking facilities therein; none of the units comply with the minimum square footage requirements. Attorney Corbo then reviewed the Order issued by the court, which required that certain information be provided to the Town within certain periods of time.

The Agent accompanied the Wellfleet assistant Health Agent to shoot video of the rooms at the Truro Motor Inn in order to give the Board an idea of the layout and suitability for long term use. Video of three rooms was presented by the Agent.

Attorney Corbo asked the Agent about the occupancy of the units at the time of her visit to the property on June 8, 2020. The Agent said she performed a brief site visit to determine if the rooms that had been empty as of January 17, 2020 remained empty. The Agent met with the on-site manager, Amy Paine, to let her know the nature of the visit. The Agent verified via Ms. Paine that several of the units that had been occupied in January are now empty and that one unit that was unoccupied in January is now occupied. The Agent did not enter any units during her visit. The Agent emailed Attorney Corbo on June 8, 2020 indicating that the on-site manager, Ms. Paine, told the Agent there were 9 rooms occupied at that time. The court order prohibited any rooms once vacated from being reoccupied.

A list was received from the owners on June 30, 2020 stating that 18 rooms are being occupied.

Attorney Browne responded that no new tenants have been put in the property and the number of 9 rooms being occupied was not accurate information.

Attorney Corbo asked Attorney Browne how it was that the on-site manager didn't know how many rooms were being occupied.

Attorney Browne stated the manager was caught off guard.

Attorney Corbo asked if the applicant keeps a register that documents the occupied rooms.

Attorney Browne said paperwork is kept on the tenants.

Attorney Corbo asked Attorney Browne if a copy of the hearing notice [for this meeting] was delivered to each of the 18 rooms that are currently occupied; Attorney Browne said the tenants were all notified.

Mr. Silva asked the applicant why, in previous years, the motel licenses were not applied for in a timely manner if they are so concerned about housing in Truro.

Attorney Browne was unable to respond to the question.

Mr. Silva referenced the earlier comments by Attorney Browne that the on-site manager was "caught off guard" about how many units are occupied. Mr. Silva said that if you are a licensed motel you are never caught off guard about the number of occupants; the manager is in charge

of safety. Mr. Silva requested an explanation as to why the manager did not know who was living on the property and in what units.

Amy Paine, the on-site manager for the Truro Motor Inn, clarified the assertion that 9 units were rented. Ms. Paine stated that the Agent stopped by without an appointment and asked her how many units were rented. Ms. Paine named the occupied units (1, 4, 8, A, B, C, 16, 17, 19, 9, 10, 11, 14), but never said an exact number. Ms. Paine understands Mr. Silva's concerns about being prepared in an emergency.

The Chair asked if the Town has Ms. Paine's contact information in case of an emergency; the Agent confirmed.

The Chair asked the Agent to check for any email comments or calls from the public.

There were two emails from an abutter Mr. Roberts, which were read into record. His comments supported denial of the license to operate the motel.

There was an email from Truro Motor Inn occupant Mr. Wundrock; it had been determined by counsel and the Chair that the content was not appropriate for reading in a public hearing and not germane to the issues before the Board, which are the conditions at the property and whether the license should be renewed.

The Chair read an email from Mr. and Mrs. Pesiri, abutters to the Truro Motor Inn, who strongly objected to any septic variances.

She read an email from Mr. Goldsmith who felt the Motor Inn should cease operating, and the motel license be denied.

The Chair lost connection to the meeting briefly, and Mr. Silva took over chairing the meeting in that period.

There was brief back and forth between an occupant of the Inn and the Board, primarily about the email not read.

Mr. Silva disagreed with the comments by the occupant and stated that the primary focus of the Board has been the conditions of the property and the owner's actions with the permitting and licensing. Mr. Silva reiterated the Board is not attacking the tenants but is working to provide a safe, licensed facility.

Chair Rose returned to the meeting and accepted a motion suggested by Town counsel, **Motion: Mr. Van Stratum moved that the Board vote to deny the application for the 2020 motel license and further, to order that the owner shall relocate all remaining occupants to suitable, alternative housing and that no units that are currently vacant or that become vacant in the future shall be re-occupied unless and until such occupancy is approved by the Board of Health or the Housing Court; seconded by Mr. Silva;**

**Discussion occurred on the motion:** Attorney Browne asked what the basis is for relocating and thought that would be in violation of the Governors emergency Orders with regard to tenants. Attorney Browne stated that ordering that tenants be relocated while the pandemic is still going on, is against the spirit of the moratorium on evictions, if not within the language of it, but in light of this the timing is wrong. She further disagreed with the decision to deny the license stating there was nothing dangerous or unsafe at the property. While the septic system

may be technically failed under Title 5 nothing was dangerous to the life and safety of the tenants and Attorney Browne expressed that she thought it was in violation of the Executive Orders in the state.

Attorney Corbo responded that the Executive Orders of the Commonwealth have a temporary stay on evictions by landlords. However, this is not an order that any tenant be evicted, rather it is an order that the owner relocate the tenants to suitable, alternative housing. The basis for that is that the landlord has put these tenants in a position of residing in units that do not comply with state or local laws; they have done that knowingly and have profited from that conduct and it should be incumbent upon them to put the tenants in safe, suitable housing until such time as the units can be made compliant with state and local laws. Attorney Corbo expressed the opinion that any moratorium on evictions does not apply in this case, because the Board is not asking that anyone be evicted but rather that they be relocated by the Owner.

Attorney Browne responded that what is being proposed is insensitive and unjust to the tenants during this time and it is absolutely not necessary right now to relocate them. The applicant will be coming back with another plan and the Town needs to have some concern for the tenants.

The Chair disagreed with Attorney Browne and stated that the Town does have concern for the tenants, and for protecting the ground water, public health and the environment.

Inn manager Amy Paine made the comment that it is very unreasonable to have the tenants move and evacuate at this time. Ms. Paine asserted that the units were inspected by a federal agent and passed the federal safety standards and regulations for occupancy.

Ms. Rose responded that the federal entities that inspected the property are not responsible for protecting public health at the local level, which is the responsibility of the Truro Board of Health.

**Vote: 5-0-0, motion carries.**

Miguel Pentanelli, resident of the Truro Motor Inn, requested to comment. Mr. Pentanelli stated that the concerns of the residents were outlined in the email sent by Mr. Wundrock *[the comments were mostly inaudible due to background noise.]*

There were no further public comments.

**Motion: Mr. Van Stratum moved to adjourn the meeting; seconded by Mr. Silva; Vote: 5-0-0, motion carries.**

Respectfully Submitted,

Michelle Fogarty 

