

**TRURO PLANNING BOARD AGENDA
TUESDAY, JANUARY 5, 2016 – 6:00 pm
Truro Town Hall, 24 Town Hall Road, Truro**

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.

Modified Definitive Subdivision Plan Endorsement, Release of Covenant and Acceptance of Surety

2015-011PB Malcolm Meldahl seeks endorsement of a Modification to Definitive Plan for Edgewood Way, approved by the Board on December 8, 2015 and following the expiration of a 20-day appeal period (no appeals were filed). The applicant also seeks a release of covenant recorded at the Barnstable County Registry of Deeds, Book 14422, Page 8, and acceptance of a new security deposit to cover road construction.

Preliminary Subdivision Continuance

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. Continued from November 18, 2016.

Discussion on Possible Zoning Proposals for 2016 Annual Town Meeting

- Seashore District Zoning
- Growth Management Bylaw (Expires 12/31/16)
- Amendment to Temporary Sign Bylaw

Review and Approval of Meeting Minutes:

- December 22, 2015 onsite visit
- December 22, 2015 Planning Board meeting

Reports from Board Members and Staff

Meeting Dates and *Other Important Dates:*

- January 19, 2016 – Reg. Meeting
- *January __, 2016 – Town Meeting Warrant Opens*
- February 2, 2016 – Reg. Meeting
- February 16, 2016– Reg. Meeting

Adjourn



TOWN OF TRURO

Planning Department
P.O. Box 2030, Truro, MA 02666
Tel: (508) 349-7004, Ext. 27 Fax: (508) 349-5505
criddle@truro-ma.gov

To: Planning Board
From: Carole Ridley
Date: December 30, 2015
Re: Staff Report #2

2015-011PB Malcolm Meldahl seeks endorsement of a Modification to Definitive Plan for Edgewood Way, approved by the Board on December 8, 2015 and following the expiration of a 20-day appeal period (no appeals were filed). The applicant also seeks a release of covenant recorded at the Barnstable County Registry of Deeds, Book 14422, Page 8, and acceptance of a new security deposit to cover road construction.

The Planning Board conditionally approved this modification to a definitive plan on December 8, 2015. A decision was filed with the Town Clerk on December 9th, and no appeals were filed within the 20-day appeal period. An attested copy of the decision is attached.

In accordance with the decision, the applicant is request three actions by the Board:

1. Acceptance of a Security Deposit to cover the construction of roadway and utilities in accordance with the approved modification. If the board so chooses to accept the security deposit, a possible motion to this effect follows:

To accept a cash deposit of \$83,680 from Malcolm Meldahl Realty Trust, reference number 2015-011 PB, in accordance with section 2.5.5.c of the Town of Truro Rules and Regulations Governing the Subdivision of Land, as guarantee of performance for the construction of roadway and utilities as shown on the plan entitled "Edgewood Way Supplemental Plan made for Malcolm Meldahl" prepared by Slade Associates and dated September 10, 2015, and in accordance with the Planning Board's conditional approval of said plan, as set forth in a decision filed with Town Clerk of Truro on December 9, 2015; and further that said cash deposit will not be released by the Town until satisfactory evidence of performance has been demonstrated in accordance with sections 2.5.6 and 2.5.7 of the Town of Truro Regulations Governing the Subdivision of Land.

2. Release of a covenant assigned under the previously approved subdivision plan. If the Board so chooses to release the covenant associated with the prior plan, a possible motion to this effect follows:

In consideration of a subsequent modification to definitive plan and associated performance guarantee, to execute form F Certification of Completion and Release of Municipal Interest in Subdivision Performance Security with respect to the covenant recorded with the Barnstable County Registry of Deeds, Book 14422, Page 8 only.

3. Endorsement of the Modified Definitive Plan.

If the Board so chooses to endorse the plan, a possible motion to this effect follows:

To endorse a Modification to Definitive Plan for Edgewood Way, conditionally approved by the Board on December 8, 2015 and following the expiration of a 20-day appeal period in which no appeals were filed.



COMMONWEALTH OF MASSACHUSETTS
TOWN OF TRURO
PLANNING BOARD – NOTICE OF ACTION

MODIFICATION TO A DEFINITIVE SUBDIVISION

Reference No. 2015-011

Map 51 Parcels 34, 88, 89 & 90

3, 6, 8 & 10 Edgewood Way

Applicant: Meldahl Realty Trust, Malcolm Meldahl Trustee

Meeting Dates December 8, 2015

Decision Date December 9, 2015

At a duly posted and noticed public hearing opened on December 8, 2015, the Town of Truro Planning Board, acting in the matter of Reference Number 2015-011, and pursuant to MGL c41A §81W, voted to approve with conditions a modification to a Definitive Plan entitled "Subdivision Plan of Land in Truro made for Meldahl Realty Trust" and recorded at the Barnstable County Registry of Deeds (Plan Book 569, Page 44) to allow modified specifications for roadway construction. The Board's vote was 7-0-0 to approve the modification with conditions.

In the Planning Board's deliberations, the following plans and submittals were reviewed:

- Letter from Slade Associates dated October 26, 2015 re: "Edgewood Farm", Truro (Malcolm Meldahl)
- Form E Application for Modification, Amendment or Rescission of Definitive Subdivision, dated November 19, 2015
- Form F Certification of Completion & Release of Municipal Interest in Subdivision Performance Security, received October 29, 2015
- Form D Covenant, received October 29, 2015
- Certified abutters lists for 3,6,8 and 10 Edgewood Way
- "Edgewood Way" Supplemental Plan made for Malcolm Meldahl by Slade Associates, dated September 10, 2015 and revised October 16, 2015 at 1": 50'
- Letter from Slade Associates dated December 3, 2015 re: Ch 41 81W Modification of Previously Approved Road Specifications for Malcolm Meldahl (filed October 29, 2015), said letter containing a request for waivers from §§ 3.4, 3.5 and 3.7 of the Town of Truro Regulations Governing the Subdivision of Land
- Letter from Slade Associates dated December 7, 2015 re: Malcolm Meldahl "Edgewood Way", said letter providing justification for requested waivers
- "Edgewood Way" Supplemental Plan made for Malcolm Meldahl by Slade Associates, dated September 10, 2015 and revised December 4, 2015 at 1": 50'

Cynthia Slade <CSlade@truro-ma.gov> 
To: "Carole Ridley (cr@ridleyandassociates.com)" <cr@ridleyandassociates.com>
PB 2015-11 Meldahl decision d 12-9-2015

December 10, 2015 4:52 PM

1 Attachment, 755 KB

12/10/2015 Carole, As requested, signed decision.....my dating originally as December 10,2015 not qualified/ one line thru 10 and 9 above and initialed is the true date. Any questions let me know.
Cynthia



[PB 2015-01....pdf \(755 KB\)](#)



La Tanzi
Spaulding &
Landreth, P.C.

80 Cardinal Lane
PO Box 2790
Orleans, MA 02653
T: 508.255.2133
F: 508.255.4786
www.latanzi.com

VIA EMAIL &
REGULAR U.S. MAIL

Ms. Carole Ridley
Town of Truro Planning Board
24 Town Hall Road
Truro, MA 02666

Re: Meldahl Realty Trust - #2015 – 011PB
Edgewood Farm – Endorsement of the Plan

Dear Ms. Ridley:

In preparation for the Planning Board meeting seeking endorsement of a plan, scheduled to take place on Tuesday January 5, 2016 Malcolm Meldahl, Trustee on behalf of Meldahl Realty Trust will be submitting a deposit in the form of a bank check in the amount of \$83,680 payable to the Town of Truro in connection with the above matter and plan approval which took place on December 8, 2015.

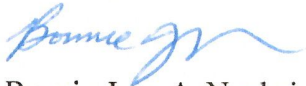
The purpose of the deposit is security as a performance guarantee under section 2.5.4. c.2. of the Town of Truro Rules and Regulations Governing the Subdivision of Land (hereinafter "Regulations") in connection with the work to be completed and represents one and one-half times the below quotes for the work to be completed.

The "work" to be completed is completion of construction of that way known as Edgewood Way in accordance with the Plan entitled, "'Edgewood Way" Supplemental Plan Made For Malcolm Meldahl," dated September 10, 2015, and revised October 16, 2015, prepared by Slade Associates, Inc. of Wellfleet, Ma as approved by the Truro Planning Board on December 8, 2015, and installation of electrical service in accordance with those quotes for said work previously submitted including a quote from MCE Dirtworks of December 7, 2015 and from Farrell Electric, Inc. dated October 6, 2015.

Said work shall be completed by June 30, 2016. The Trust intends to sell lots 1 and 2 on the plan recorded in Plan Book 569, Page 44 of the Barnstable county Registry of Deeds to Truro Center for the Arts At Castle Hill which closing is scheduled to take place on January 7, 2016. Lots 3 and 4 on said plan have already been conveyed to the Truro Conservation Trust in order to meet their year end funding requirements. As part of the sale to take place to Castle Hill, there is an escrow agreement which makes provision for completion of the work by June 30, 2016.

It is understood that the deposit will not be released by the Board back to Meldahl Realty Trust until satisfactory evidence of performance is submitted to the Board per sections 2.5.6 and 2.5.7 of the Regulations and including submission of the items a-c of section 2.5.7 of said Regulations.

Yours truly,



Bonnie-Jean A. Nunheimer

Enclosure

Bruce A. Bierhans, Esquire
Chester N. Lay
client

It is understood that the deposit will not be released by the Board back to Meldahl Realty Trust until satisfactory evidence of performance is submitted to the Board per sections 2.5.6 and 2.5.7 of the Regulations and including submission of the items a-c of section 2.5.7 of said Regulations.

Yours truly,



Bonnie-Jean A. Nunheimer

Enclosure

Bruce A. Bierhans, Esquire
Chester N. Lay
client

PLANNING BOARD

FORM F
CERTIFICATION OF COMPLETION & RELEASE OF MUNICIPAL INTEREST
IN SUBDIVISION PERFORMANCE SECURITY

Date: _____
Subdivision Name: Meldahl Realty Trust Location 147 Route 6
Owner: Malcolm Meldahl, Trustee
Owner address: PO Box 34, Truro, MA 02666
Applicant: same as owner
Applicant address: _____
Barnstable County Registry of Deeds, Plan Book 569, Page 44
Barnstable County Land Registry, L.C.P. No. _____
Form D Covenant Doc. No. _____ Book 14422 Page 8

The undersigned, being a majority of the Planning Board of the Town of Truro, Massachusetts, hereby certify that the construction of ways and the installation of municipal services for the subdivision cited above shall be satisfactorily completed in accordance with a modified plan of Slade Associates, Inc. entitled "Edgewood Way" Supplemental Plan Made for Malcolm Meldahl" dated September 10, 2015 and conditionally approved by the Truro Planning Board on December 8, 2015, attached hereto and secured by a monetary deposit filed with the Town of Truro through its Planning Board on January 5, 2016, per the vote attached hereto.

Pursuant to MGL c.41 §81-U and in consideration of the monetary security filed in accordance with the modified plan as cited above, the Town of Truro, a Massachusetts Municipal Corporation, acting through its Planning Board, hereby releases its interest in the performance security recorded with the County of Barnstable in Book 14422, Page 8.

Date: _____

Truro Planning Board

COMMONWEALTH OF MASSACHUSETTS

Barnstable, ss.

On this _____ day of _____, 20____, before me, the undersigned notary public, personally appeared _____, one of the above signed members of the Truro Planning Board, proved to me through satisfactory evidence of identification, which were _____, to be the person whose name is signed on the preceding or attached document in my presence.

By commission expires: _____

Notary Public

**SLADE ASSOCIATES, INC.
REGISTERED LAND SURVEYORS**

P.O. BOX 592
WELLFLEET, MASSACHUSETTS 02667
508-349-3110
FAX 508-349-7577



ASSOCIATES:

RICHARD F. LAY, R.L.S.
CHESTER N. LAY, R.L.S.

E-MAIL: SLADE@SLADE-ASSOCIATES.COM
CHET.LAY@SLADE-ASSOCIATES.COM
RICHARD.LAY@SLADE-ASSOCIATES.COM

December 10, 2015

Regulatory Review
Natural Heritage & Endangered Species Program
Massachusetts Division of Fisheries & Wildlife
1 Rabbit Hill Road
Westborough, MA 01581

Re: 3, 6, 8 & 10 Edgewood Way, Truro

Dear Sir/Madam,

I believe that this project is exempt under 321 CMR 10.14, section 12.

I am enclosing our plan showing the existing driveway on our locus as well as photographs. The original subdivision plan was approved and recorded in 2001. Recently, the owner has agreed to sell Lots 3 and 4 to the Truro Conservation Trust to be preserved for open space. With this in mind, the Truro Planning Board has agreed that no construction will be necessary beyond the existing cul-de-sac north of the shop and studio on Lot 1. The board does want the owner to pave the existing T-base driveway and cul-de-sac as shown on our plan.

I believe in essence this all can be considered repair and improvement to an existing driveway.

Many thanks for your consideration in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Chester N. Lay". The signature is fluid and cursive, with a large, sweeping flourish at the end.

Chester N. Lay
Vice President, Slade Associates, Inc.
chet.lay@slade-associates.com

Encls.

Cc: Carole Ridley ✓
Bonnie Jean Nunheimer, Esquire
Bruce Bierhans, Esquire
Malcolm Meldahl

CNL/jd



TOWN OF TRURO Planning Department

P.O. Box 2030, Truro, MA 02666
Tel: (508) 349-7004 Fax: (508) 349-5505

To: Planning Board
Fr: Carole Ridley, Consultant
Date: December 30, 2015
Re: Secrest Preliminary Plan Continuance

2015-008PB Seacrest Family Trust seeks approval of a 2-lot preliminary subdivision pursuant to MGL c.41, Section 81-S and Section 2.4 of the Truro Rules and Regulations Governing the Subdivision of Land for property located at 54 Old King's Highway, Assessor's Map 47, parcels 120 and 20.

This hearing was opened on November 18, 2015 and continued to January 5, 2016 to allow time for the applicant to gather information in response to comments and questions raised by the Board and in public testimony. A letter from the applicant's attorney, Duane Landreth, requested to extend the period for Planning Board action, e.g. filing of a notice of action with Town Clerk, to January 11, 2016. This matter can be further continued only if the applicant agrees in writing to extend the period of action to a date certain.

Based on the discussion at the November 18th Planning Board hearing, I sent a letter to Attorney Landreth on November 23rd itemizing comments and requests for information. On December 18th, Attorney Landreth submitted a letter with attachments responding to my letter. Both letters are attached.

Town Staff Comments

- Town staff comments provided prior to the November 18th meeting include:
 - Conservation: There are no wetlands on site. Lots 1 and 2 are entirely within estimated habitat as delineated by Natural Heritage and Endangered Species Program. Any work proposed work in this area would require a filing with Natural Heritage and Endangered Species Program (NEHSP).
 - Health: Two septic systems serving Lot 1 passed inspection in 2013. The preliminary plan should show the location of the existing septic systems serving Lot 1, as well as the well serving the lot. Lot 2 would be restricted to 8 bedrooms.
 - Police: No concerns
 - Building Commissioner: Seeks clarification on origin of layout for Old King's Highway. Plan does not show sufficient information such as dimensions and design of the cul de sac to determine whether it meets town standards. For Lot 2 to have legal frontage, cul de sac and Old King's Highway would have to meet road standards, or alternately, zoning relief would need to be sought from the Board of Appeals.

Planning Staff Comments

Administrative comments:

- The Preliminary Plan has not changed since the November 18th hearing.
- The application materials submitted for the Preliminary Plan meet the requirements of §2.4.2 and abutters have been duly notified under § 2.4.3.
- A visit to the site was held on October 16th with Steve Sollog, and Jack Riemer as current members present.

Planning issues:

A number of planning issues have been raised in the review of this application:

- Adequate Legal frontage/Requirement for Zoning Relief

In a letter to the applicant's engineer dated October 5, 2015, Charleen Greenhalgh noted that the Planning Board cannot waive the required minimum roadway layout width of 40 feet on Old King's Highway and that a variance from the Zoning Board of Appeals would be required. Attorney Duane Landreth submitted the enclosed letter (October 19, 2015) articulating an opinion that the Planning Board does have the right to waive strict compliance with the access road layout requirements provided it meets the standards of the improved roadway surface. Under this interpretation, a variance by the Zoning Board of Appeals is not required. Town Counsel was asked to opine on the matter and determined that Section 10.4 of the Zoning Bylaw (definition of "Street") requires (by incorporating a provision of the prior version of the Board's Subdivision Rules & Regulations) that a street have at least a 40-foot layout if it is "to be used for lot frontage." Because lot frontage for the proposed subdivision will be provided by the proposed subdivision roadway—and not Old Kings Highway—which will have at least a 40-foot layout, no zoning variance would be required from Section 10.4.

- Deed Restriction on Parcel 120

A deed (book 5295 page 092) indicating that a parcel matching the description of parcel 120 was "conveyed subject to the restriction that the parcel shall not further divided or sub-divided." (sic) Town Counsel was asked to opine as to whether the Board can act on this application in light of the deed restriction or what relevance this deed restriction may have in the Board's consideration of this application. Town Counsel's opinion, enclosed, is that the presence of the deed restriction should not prevent the Board from hearing or taking action on the application, but could be factored into its decision. Mr. Landreth's opinion on the implications of the deed restriction is found in pages 17-19 of his 12/18/15 submission. In essence, he opines that the restriction is a private agreement between two parties set to expire in September of 2016.

- Access to Union Field Road

The Board questioned whether an easement allows Parcel 120 to have legal access to Union Field Road. In addition to abutter concerns, inherent in this question is a concern that additional access could facilitate further subdivision of either parcel. Attorney Landreth addresses this question in pages 3-8 of his 12/18/15 submission, and concludes that the Secrest Family Trust does not have legal access to Union Field Road.

- **Ownership/Improvement of Old Kings Highway**

On November 18th several questions were raised about the ownership, control, rural character and safety of Old King's Highway. Attorney Landreth addresses some of these questions in pages 9-12 of his 12/18/15 submission. Old Kings Highway is on the list of Town of Truro Roads, and the Board of Selectmen would have to authorize any proposed improvements thereon even if proposed and paid for by a private party. Information provided by Attorney Landreth indicates that ownership to the centerline is not entirely clear. While acknowledging that Old King's Highway in its current configuration could provide adequate access for the one additional house, Mr. Landreth conveys the applicant's preference for the proposed widening Old King's Highway to 14 feet along the length of the property and improving the stone surface.

Planning Board Jurisdiction

According to § 2.4 of the Rules and Regulations Governing the Subdivision of Land, the purpose of a preliminary plan is to "enable the subdivider, the Board, other municipal agencies and owners of abutting property to identify and discuss any problem areas in the proposed subdivision. Review of, and comments on, a Preliminary Plan are strictly advisory and do not commit the Board to approve a Definitive Plan.

§ 2.4.4 Action on Preliminary Plans states:

"Within 45 days after submission to the Board of a preliminary plan, it shall notify the applicant and the Town Clerk, by certified mail, either that the plan has been approved, or that the plan has been approved with modifications suggested by the board or agreed upon by the person submitting the plan, or that the plan has been disapproved, and in the case of disapproval, the board shall state its reasons therefore.

The approval of a Preliminary Plan does not entitle that plan to be recorded, but it may facilitate the approval of a Definitive Subdivision Plan."

Planning Board Options

As noted above, the Board may vote to approve the plan, approve the plan with conditions, or disapprove of the plan, citing specific reasons for disapproval.



TOWN OF TRURO

P.O. Box 2030, Truro, MA 02666

Tel: (508) 349-7004, Ext. 27

Fax: (508) 349-5505

criddle@truro-ma.gov

Sent Via Email

Duane P. Landreth, Esq.
La Tanzi, Spaulding & Landreth, P.C.
8 Cardinal Lane, P.O. Box 2300
Orleans, MA 02653-2300

November 23, 2015

Re: 2015-008PB Secrest Preliminary Plan

Dear Mr. Landreth:

Thank you for your letter extending the Board's period of action on this application to January 11, 2016. The discussion of the application is continued to the Board's meeting on January 5, 2016.

During the meeting of November 18th, the Board raised the following issues and questions about the proposed plan that require additional information and/or clarification:

- An existing deed restriction appears to limit the subdivision of Parcel 120
- A deeded easement may provide alternate access to newly created Lot 2 (Parcel 20), creating the potential for further subdivision of that lot
- Who owns to the centerline of Old King's Highway, on either side of the centerline?
- As a public way, is permission needed to improve Old King's Highway and what authority would grant that permission?
- In light of public comment that suggested the alternative of not improving Old King's Highway, how would that suggestion affect the proposed plan?
- In light of public comment that improvements to only a portion of Old King's Highway could affect public safety and rural character of the road, how could those concerns be addressed?

Please provide additional information related to these points to me no later than Wednesday, December 23rd so that the information can be provided to the Board for review in advance of the January 5th meeting. Any additional materials provided should be stamped by the Town Clerk.

Sincerely,

Carole Ridley
Planning Consultant

Cc: Lisa Maria Tobia, Chair



La Tanzi Spaulding & Landreth, P.C.

8 Cardinal Lane
P.O. Box 2300
Orleans, MA 02653
T: 508.255.2133
F: 508.255.3786
www.latanzi.com

Duane P. Landreth
Direct Line: 508.255.2133, ext. 138
dlandreth@latanzi.com

December 18, 2015

Lisa Maria Tobia, Chairman
Truro Planning Board
Truro Town Hall
24 Town Hall Road, P.O. Box 2030
Truro, MA 02666

Re: Application for Preliminary Subdivision Approval
No. 2015-0080PB, Secrest Family Trust

Dear Chairman Tobia and Members of the Board:

As a result of our meeting with the Board on November 18, 2015, in a letter, Carole Ridley summarized a number of issues which the Board had questions about. The written materials here submitted are intended to address those issues in advance of the Board's next meeting on January 5, 2016.

The materials submitted are:

- | | |
|---|--|
| (1) Affidavit of Dana A. Berry, Esq. | The question was whether Secrest could gain access to its back lot, Assessor's May 4, Lot 20, land shown on Plan Book 275, Page 73, from Union Field Road or Union Field Extension, which would eliminate the need for access from the Old King's Highway ("OKH"). Attorney Berry's Affidavit, given under oath, describes his title examination and opines that Secrest has no such right based on his exam. |
| (2) Memorandum of Duane Landreth dated 12/16/15 to the Planning Board | The issues relating to the ownership, condition, improvement of and necessary authorizations for OKH are addressed in this memo. The conclusion is that the historical record supports that Truro did not expressly acquire the fee ownership in OKH when it was laid out in 1715. There is no evidence on whether the Town holds the fee interest in OKH, or just an easement. As a public way, the applicant may improve it with the |



Lisa Maria Tobia, Chairman
December 18, 2015
Page - 2 -

approval by the Board of Selectmen after its satisfaction that the work is properly and safely done, and the Town is not exposed to liability.

- (3) Memorandum of
Duane Landreth dated
12/18/15 to the
Planning Board

This is addressed to a Board member's concern that there was a private deed restriction imposed on the lot fronting on OKH, being Assessor's Map 47, Lot 120, which would impede the Town's authority.

These materials are being sent by regular mail but are also e-mailed to Ms. Ridley for ease of duplication and dissemination.

Thank you for your attention in this matter.

Very truly yours,

Duane P. Landreth

Enclosures

AFFIDAVIT

I, DANA A. BERRY of P.O. Box 2300, 8 Cardinal Lane, Orleans, MA 02653, being duly sworn, depose and say:

1. I have been an attorney at law in the Commonwealth of Massachusetts since 1973 and have been extensively involved with the examination of titles to real estate in Barnstable County. I have been a Land Court Examiner for more than thirty-five years.
2. This affidavit pertains to land off Old King's Highway in Truro, Barnstable County, Massachusetts, hereafter "locus," shown on a plan entitled "Plan of Land in Truro, Mass. as surveyed for Miriam A. Fowler, Scle 1 in. = 40 ft., April 1973, Schofield Brothers, Inc., Registered Professional Engineers & Land Surveyors, Orleans & Framingham, Mass.," recorded with the Barnstable County Registry of Deeds in Plan Book 275, Page 73, a copy of which is attached as Exhibit A.
3. All references herein, unless otherwise noted, are to documents recorded with the Barnstable County Registry of Deeds.
4. I have examined the title to locus and in accordance with the Title Standards of the Real Estate Bar Association for Massachusetts, the period of my examination covers a period of at least fifty years.
5. I have assumed title to locus in Miriam A. Fowler by a deed from Lois S. Carney dated October 28, 1948, and recorded in Book 706, Page 247.
6. Miriam A. Fowler died testate on July 17, 1975, her estate was probated in Barnstable County Probate and Family Court Case No. 52826, and Edward C. Fowler was appointed as the executor of her estate.
7. Edward C. Fowler as executor of the estate Miriam G. Fowler and pursuant to a power of sale in her will, conveyed locus to Alfred B. Tinker, Jr. by a deed dated April 29, 1976, and recorded in Book 2353, Page 269.
8. Alfred B. Tinker, Jr. conveyed locus to Philip J. Secrest et ux. by a deed dated April 14, 1988, and recorded in Book 6213, Page 315.
9. Philip J. Secrest et ux. conveyed locus to the Secrest Family Real Estate Nominee Trust by a series of deeds between 1996 and 2001.

10. Locus is bounded on the south by land which is shown on a plan entitled "Subdivision Plan of Land in Truro owned by Nathaniel B. Dyer, Scale 1" = 50', July 1971, Francis J. Alves, C.E., Provincetown, Mass, hereafter "the Dyer plan," recorded in Plan Book 248, Page 39, a copy of which is attached hereto as Exhibit B.

11. In my examination of the records at the Barnstable County Registry of Deeds I have not found any evidence which would support claims (1) that the owner of locus (that is, the Secrest trust), has rights in the "Private Way 40' Wide" over Lot 3 shown on the Dyer Plan; (2) that the trust has the right to use of such way as access to Union Field Road; or (3) that the trust has the right to use Union Field Road, which is a private way.

12. Nathaniel B. Dyer, acquired the land shown on Plan Book 248, Page 39, from his parents, Joseph H. Dyer and Elizabeth S. Dyer, who died respectively in 1936 and 1951 (See Barnstable County Probate and Family Court Cases 25303 and 32734), and created the subdivision shown on the plan recorded in Plan Book 248, Page 39. Nathaniel Dyer conveyed Lot 3, over which the way runs, to Stanley M. Sigel on September 20, 1971, by a deed recorded in Book 1745, Page 332.

13. If there were, in fact, a right appurtenant to locus to use the way shown on the Dyer plan as access to Union Field Road, in my opinion it would have most likely been created by an express agreement between Nathaniel B. Dyer and Miriam A. Fowler between July 1971, when the Dyer Plan was created, and September 1971, when Dyer sold Lot 3 to Sigel. However, I specifically did not find any such agreement on record.

14. Moreover, Dyer did not refer to any rights in favor of Miriam Fowler in his deed to Sigel. In that deed he reserved the right to install utilities and grant easements to public service corporations but the rights were personal to him and not in favor of Miriam Fowler.

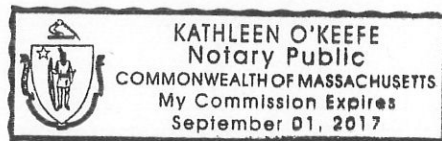
SIGNED and SWORN to under the pains and penalties of perjury on December 5, 2015.

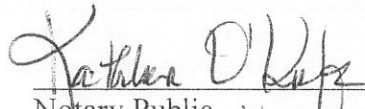

Dana A. Berry

COMMONWEALTH OF MASSACHUSETTS

BARNSTABLE, ss

On this 5th day of December, 2015, before me, the undersigned Notary Public, personally appeared Dana A. Berry, who proved to me through satisfactory evidence of identification, which was my personal knowledge of his identity, to be the person who signed the preceding or attached document in my presence, and who swore or affirmed to me under the pains and penalties of perjury, that the contents of the document are truthful and accurate to the best of his knowledge and belief.




Notary Public KATHLEEN O'KEEFE

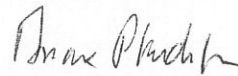
**ATTORNEY'S CERTIFICATION OF AFFIDAVIT
UNDER G.L. c.183, §5A**

COMMONWEALTH OF MASSACHUSETTS

BARNSTABLE, ss

December 5, 2015

I, Duane P. Landreth, hereby certify that I am an attorney at law with offices 8 Cardinal Lane, Orleans, MA 02653; that the facts stated in above affidavit are relevant to the title of land located off Old King's Highway. Truro, Barnstable County, Massachusetts, and shown on a plan recorded with the Barnstable County Registry of Deeds in Plan Book 275, Page 73, and that said affidavit will be of benefit and assistance in clarifying the chain of such title.



Duane P. Landreth

275-73

PLAN BOOK 275 PAGE 73



Plan Book 248 Page 39

Approved for the Town of Truro Planning Board

Date: Aug 17, 1971

Shirley M. Stewart

Thomas B. Dyer

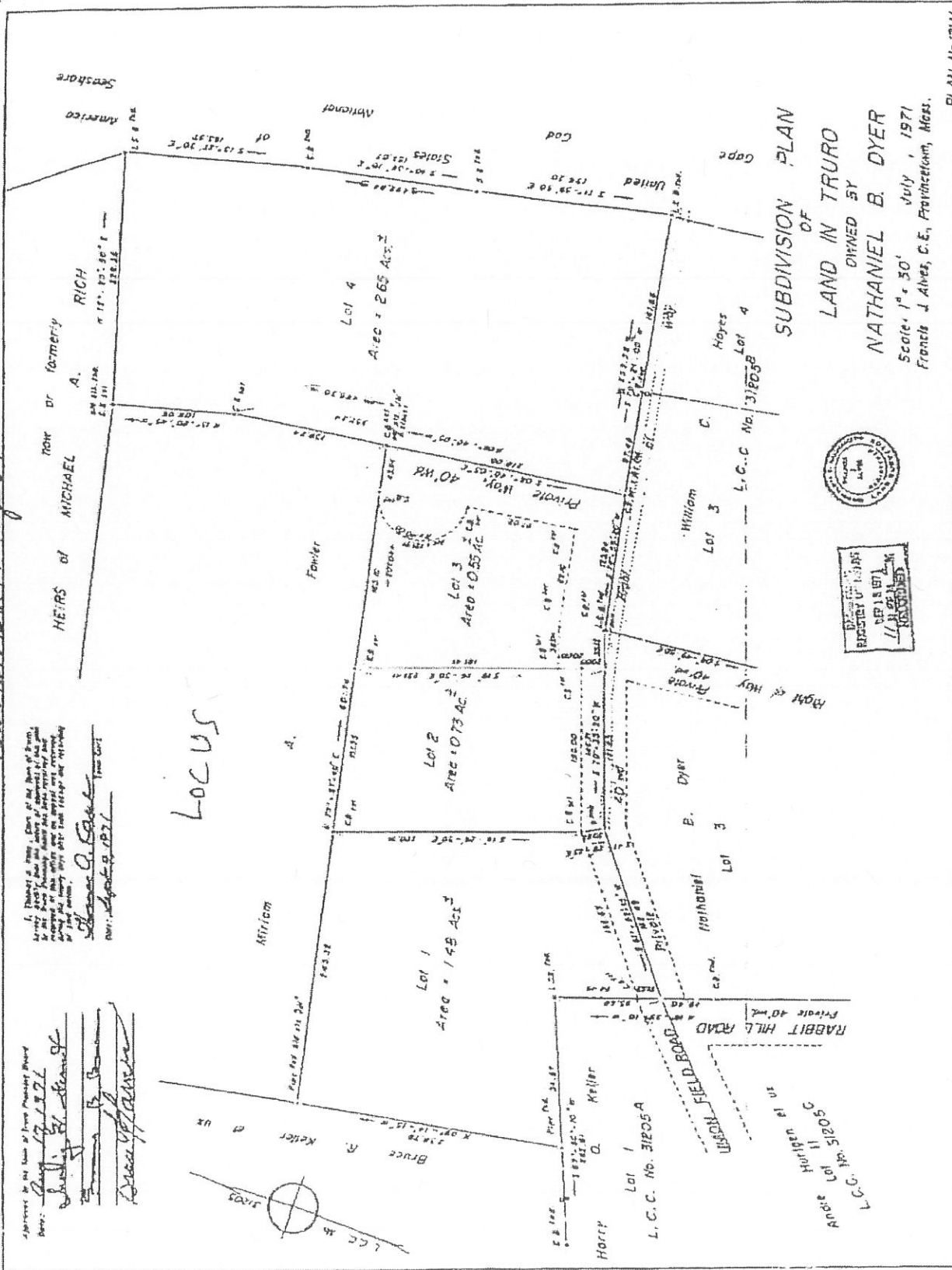
Donna J. Dyer

In Testimony of Truth, I, Clerk of the Board of Truro, do hereby certify that the above is a true and correct copy of the original as filed in the Registry of Deeds for the Town of Truro, Cape Breton County, Nova Scotia, and that the same was duly filed for record and return of said copies.

Thomas A. Dyer, Town Clerk

Notary, August 10, 1971

LOCUS



248-39

MEMORANDUM

From: Duane P. Landreth, Esq.
Date: December 16, 2015
To: Planning Board of Truro
Re: Secrest Family Real Estate Nominee Trust ("Secrest")
Land in Truro

A. Introduction.

The Secrest Family Real Estate Nominee Trust owns land in Truro, shown on plans recorded at the Barnstable County Registry of Deeds in Plan Book 423, Page 37, and Plan Book 275, Page 73 (together hereafter referred to as "Locus"). It is currently the location of one house. Secrest wishes to subdivide the property into two lots, one of which will be the site of the existing house, and the other will be the site for a new house.

At its meeting on November 18th, the Board asked applicant to address certain questions:

- (a) Does the applicant have the right to improve the Old King's Highway ("OKH") in the front of his property?
- (b) Does the applicant require authorization to improve OKH?
- (c) Who owns to the center line of OKH?
- (d) How would not improving OKH affect the plan?
- (e) Would improving just a portion of OKH change the character of the road or create a safety problem?

This memorandum is intended to respond to these issues.

B. Surface Improvement to Old King's Highway.

Locus abuts OKH for a distance of 835 +/- feet. The portion is currently an unsurfaced way, 8' to 10' in width. Secrest wishes to improve the travelled way widening it to a layout width of 20' by dedicating some of its land to the roadway and improving one-half of the existing way and the rest from its land to a total travelled width of 14'.

Notwithstanding its condition, the evidence indicates that OKH is a public way. Attached to this memorandum and marked "A" is page 927 of the History of Barnstable County Massachusetts, Simeon Deyo, editor, N.Y., H.W. Blake & Co. (1890), stating that in 1715 the "present" OKH was laid out through Truro, as a continuation of the Cape's Old County Road, on the backside of town around the heads of rivers. When that book was published in 1890, only portions of the way were in use. Based upon this and other information, surveyors have typically shown OKH as an undefined public way; see, for example, the plan at Book 423, Page 37, attached and marked "B", a portion of Locus as surveyed by Richard Lay of Slade Associates, Inc. in 1986.

Likewise, an excerpt from the Eastham Town records shows that on June 19, 1721, it was "voted, granted and allowed by the Town . . . to be the Kings High-way and Common Road through the Town of Eastham". A copy of the record is attached and marked "C" and a transcription of it is attached and marked "D". The record reveals that the way was already in existence, and, in fact, the running description of the way uses houses of known individuals as the monuments for the location. This record also does not state whether the result was the Town acquiring a fee interest or an easement for public use.

An old case adjudicating the effect of the Town of Boston's 1683 Order to stake out a way, held that a laying out of a town highway lawfully did not imply that it acquired title in fee in the land over which it was laid. City of Boston vs. Thomas Richardson, 105 Mass 351 (1870); 1870 Mass Lexis 262.

Based on the existing evidence, it cannot be determined who "owns" the public way. However, in light of case law and the local bylaws, actual fee ownership of the OKH is not critical.

Massachusetts General Laws Chapter 183, Section 58, the so-called "derelict fee" statute, provides that a deed "passing title to real estate abutting a way, whether public or private . . . shall be construed to include any fee interest of the grantor in such way", [emphasis supplied]. The statute contemplates a situation where an owner of land abutting a public way has an

ownership interest in the public way. In the absence of a governmental agency acquiring the fee interest, the abutting owner owns to the midpoint of the way. But as noted above, it is unclear who owns the way. It can be argued under the derelict fee statute that its public policy would favor the abutting owners ownership of OKH.

Secrest has the right to make the minor improvements proposed, notwithstanding the law generally prohibiting a private individual making repairs to a public way. *Anderson v. Healy*, 36 Mass.App.Ct. 131,135, 629 N.E.2d 312, 315 (1994); *Perry v. Planning Board of Nantucket*, 5 Mass.App.Ct. 144, 444 N.E.2d 389 (1983); *Waterhouse, LLC v. Board of Selectmen of Kingston*, 85 Mass.App.Ct. 1122, 9 N.E.3d 350 (2014).

In *Anderson*, the court said that the prohibition against improving an abutting public way was only “a general rule” against making “major repairs”, and that the rationale underlying the rule was to prevent “unnecessary clashes between the interests of private residents and public convenience.” In the instant case, the repairs will be relatively minor and can be distinguished from the ways discussed in the cited cases. Those ways were created by modern statutory takings and owned in fee by the municipalities. OKH serves only a few remote properties and is essentially neglected by the Town of Truro.

Under *Anderson*, and Massachusetts General Laws Chapter 183, Section 58, Secrest may make the proposed improvements to OKH subject to the Town bylaw discussed below.

C. Town Bylaw.

Section 9 of the Town’s General Bylaws provides:

No person except the officers of the Department of Public Works or its authorized agent(s) in the lawful performance of their duties shall obstruct, break, dig up or excavate any public . . . highway, town way or street without first obtaining a written permit from the Selectmen. Every person receiving such permit shall . . . indemnify and save harmless the town against all loss, damage or cost suffered or claimed.

Subsection 1-9-1

This Bylaw allows an individual to improve a public way, subject to obtaining the permission of the Board of Selectmen. The Bylaw's intent is to regulate any such improvements so that the Town's interests are protected. Secrest would obtain the necessary approvals from the Board of Selectmen.

Whether one-half of the width of OKH is owned in fee by Secrest is not critically important. That portion of the width of OKH that Secrest would improve to a fourteen feet travelled way can be accomplished under Section 9 of the Town's general bylaws.

D. The Impact if OKH Is Not Improved.

Since maximum build-out of this subdivision would add only one single family residence, OKH presently provides adequate access to the existing Secrest residence and the neighbor, Daniel Duarte. If OKH is not improved, the exterior access is still safe and adequate for just one extra residence.

Applicant's position is that the improvement proposed to OKH from 8 – 10 feet to a still modest dimension – a 14 foot travelled way – and installing a stone surface will provide a benefit to travelers over the way with no negative impact on its rural character or safety. The argument that a partial widening of OKH here will create a public hazard seems spurious given the current substandard condition of OKH in that specific area and installing necessary signage.

Applicant believes that the proposed improved cul-de-sac for the division into two lots is a public benefit because it provides a safe turnaround for fire and emergency vehicles which serve the neighborhood back to where OKH comes off of Higgins Hollow Road. Improving the last 750 +/- feet of OKH that leads to the cul-de-sac enhances access to and use of it. Conditioning the subdivision approval upon the improved surfacing of this portion of OKH and the turnaround provided by the cul-de-sac provides a clear public benefit and improves the present situation.

History of Barnstable County, Massachusetts
Simon W. Peryea, ed.
N.Y. H.W. Blake & Co. 1890

the chief ones. Mill pond, of seventeen acres, has the Pamet river for its outlet. In the extreme north-west corner of the town is East harbor, a small, shoal tide-harbor, but by drifting sands its usefulness has ceased and the extensive salt marshes around it have been greatly diminished from the same cause. Over the dyke which the government built along the beach to the west part of the harbor the present railroad runs, effectually cutting off as an anchorage this body of water from the bay. High Head, southeast of this harbor, was a conspicuous settlement in the early history of the town, but now contains only three residences. East Harbor village, also a prominent community a century ago, was adjacent at the south, but not a residence remains. From this little village of twenty-three houses twenty-eight brave men were killed or died in the service of the colonies during the revolutionary war. South of the last ancient village is the former Pond village, now called North Truro. One mile south of this is Great Hollow--another small community, and still southward is the Pamet river and the community known as Truro village. In the south-west part is another little village known as South Truro, where may be found the heaviest wood land in the town. The healthfulness of the town compares favorably with any of the Cape, and with the accommodations and advantages presented at the Highlands, the influx of visitors increases.

In 1715 the present King's highway was laid out through Truro--to connect from Eastham to and through the province lands. It was really the continuation of the old county road along the Cape. It ran along the back side of the town, around the heads of the rivers, and, although only used in portions at the present day, its tortuous course is well known through the town.

In 1718 the town ordered the erection of a pound in a central place, and Joseph Young was appointed its keeper. This institution, unlike the stocks and whipping post erected about the same time, has been kept up to the present, there being at this writing three separate pounds, one at each village.

The early industries of the settlers were fishing and agriculture. It is claimed by some writers that Truro was the first and most prominent town in the whaling business, but that after a few years Falmouth, Wellfleet and Provincetown excelled. The whalers of Truro were distinguished for their success and enterprise, and as late as the beginning of the present century the town had nine large vessels in the business, one of which was the *Lydia and Sophia*, built in Truro, on the Pamet river, and her timbers were cut from the land of the town. The town records of 1720 speak of Joshua Atwood's lance "that he hath made on purpose to kill fin-backs," describing the peculiarities and mark. Captains David Smith and Gamaliel Col-

All a town meeting in September on the nineteenth day of June anniversary 1721 orderly beginning and met and notice in and by the returning given that it was to elect two good and law full men to serve on the day of ye next but the first before or count of common pleas and Governor's petition of the peace to be held on at Barnstable on the first Tuesday in July, and to consider and do what may be proper in order to ye keeping out a high-way through the town to two bounds from the head of the Northwell and also to do what may be proper relating to the bridge's position for to be set off at a convenient and all the more in the town made choice of Joseph Boardman moderator for

the meeting and all the meeting the town made choice of the Samuel Brown and Mr Joseph Bole to serve and the day of ye next at the meeting in the house of common pleas and general sessions of the peace to be held on at Barnstable at the same time on the first Tuesday in July

At the above the town meeting viz. June 18th 1721 it was voted granted and allowed by the town then met that the way which now goes through the town of Eastham from the bounds of Barnwick by the Nicholas's house to the bounds of ye town on the north part of the town of Eastham shall to the northward of the house of Ebenezer Freeman. is and shall be allowed to be the King's High-way and common Road through the town of Eastham which the way begins at Barnwick house near the house of Nicholas's house above and to from thence along the common travelling way northward along by the house of Mr Barnard Freeman's house and so in the common way passing by the house of Captain Joseph's house and so along the common Road turning to the left hand and shall near the land and house of Joseph's house passing along by the house of Barnard Freeman's house and so by the New meeting house and so along in the common known roadway to the head of the hill which the turning shall be to the left hand passing along by the house of Captain's house and so along to the house of Mr Freeman's house and so over the road and along in the way which leads to the town (and over round the head of Barnard's river) until it comes

FROM EASTHAM TOWN RECORDS

viz: June ye 19th 1721 it was voted granted and allowed by the Town then met, that the way which now goes through sd Town of Eastham from the bound of Harwich by Lieut Nicholas Snow's to the bound of Truro on the north part of the Town of Eastham a little to the northward of the house of Ebenezer Freeman is and shall be allowed to be the Kings High-way and common Road through the Town of Eastham which sd Way begins at Harwich Bounds near the house of Nicholas Snow above said so from thence along the common traveling way northward along by the house of Mr. Samuel Knowles Junr and so in the common known way passing by the house of ensign Joseph _____ so along the common Road running to the left hand a little _____ the land and house of Joseph Atwood passing along by the house of Samuel Freeman Junr and so by the _____ meeting house and so along in the common known roadway to the house of Patrick Philbrick thence turning a little to the left hand passing along by the house of Elisha Eldridge Junr and so along to the Herring River or brook and so over the brook and along in the way which leads to Truro (and goes round the head of Pamet River) until it comes to the bounds of the Town of Truro this sd way to be fourty foot wide the whole length through the Town from ye south to ye north.

MEMORANDUM

From: Duane P. Landreth, Esq.
Date: December 18, 2015
To: Planning Board of Truro
Re: Secrest Family Real Estate Nominee Trust ("Secrest")
Land in Truro – Deed Restriction

A. Introduction.

The parcel belonging to Secrest which fronts upon the Old King's Highway, Assessor's Map 47, Parcel 120, was acquired by Philip and Rosamund Secrest from Wilfred Slade and Clark Brown by a deed dated and recorded on September 11, 1986 at Book 5295, Page 92. After description of the deeded premises, the deed recites that,

[s]aid parcel is conveyed subject to the restriction that the parcel shall not further (sic) divided or subdivided. This restriction shall run with the land and is imposed for the benefit of the grantors' remaining land which is located North of the parcel herein conveyed and on the Northerly side and abutting siad (sic) Old King's Highway.

The restriction does not specify a time limitation.

During the November 18, 2015 meeting, a question was raised whether the restriction was a legal barrier to the Town approving the combination and reconfiguration of Assessor's Map 47, Parcels 20 and 120, as proposed by this subdivision.

B. Private Restrictions.

The language in the deed is known as a private restriction. For the benefit of a grantor, it imposes a limitation on the use of property thereby conveyed. It is similar to a contract between two private parties.

The law does not favor restrictions on the use of land, 28 Mass Practice Series, Eno and Hovey (2004), Section 13.12. The enforcement of restrictions is strictly regulated by

statute. Since 1887, restrictions which do not state a specific time limitation, as in the present case, are limited to thirty years,

restrictions unlimited as to time, by which the . . . use of real property is affected, shall be limited to the term of thirty years after the date of the deed . . . creating them.

Massachusetts General Law Chapter 184, Section 23.

The present restriction cannot be extended for a longer period of time, *Stop & Shop Super Market v. Urstadt Biddle*, 433 Mass 285, 288-289, 740 N.E.2d 1286, 1288 (2001). Under the terms of the deed and the statute, this restriction expires on September 11, 2016, thirty years after the date of the deed.

An open question is what the term “divided or subdivided” in the restriction means. Since restrictions on the use of land are disfavored and ambiguities construed in favor of the grantee, the proper interpretation should be that no physical change in the premises resulting from a division or subdivision should take place before September 11, 2016. A physical change would mark the first impact upon the holder of the restriction. “Dividing or subdividing” means the use of the land, not the preliminary steps which must be taken under the Subdivision Control Law, Massachusetts General Laws c. 41, Sections 81k et. seq. Such preliminary steps have no impact upon the holder of the restriction’s land.

C. Consideration of the Restriction by the Board is Erroneous.

It is axiomatic that the deed restriction runs in favor of the owner who imposed it. He or she is the only party with standing to enforce its terms. The Town may not choose sides in what is a private civil matter. Should the holder of the restriction wish to enforce it during its duration, he or she has the right to seek equitable relief in Court.

Neither the Subdivision Control Law, nor the Board’s regulations empower the Town to adjudicate private rights in this situation. For the Town to attempt to enforce a private

owner's rights overreaches and discriminates against Secrest in favor of the abutting property owner. That would be inherently unfair and legal error.

D. Conclusion.

The Town need not concern itself with the covenant which by its own terms is of no further force and effect as of September 11, 2016.



**La Tanzi
Spaulding &
Landreth, P.C.**

8 Cardinal Lane
P.O. Box 2300
Orleans, MA 02653
T: 508.255.2133
F: 508.255.3786
www.latanzi.com

Duane P. Landreth
Direct Line: 508.255.2133, ext. 138
dlandreth@latanzi.com

November 23, 2015

Via E-Mail: CR@RidleyandAssociates.com

Carole Ridley
Ridley & Associates, Inc.
115 Kendrick Road
Harwich, MA 02645

Re: Application 2015-008PB, Secrest Family Trust
54 Old King's Highway, Truro

Dear Carole:

By this letter, the applicant in the above captioned matter confirms a continuance of the Board's meeting on January 5, 2016.

By this letter, applicant agrees that the period for action on a preliminary plan as per subsection 2.4.4 of the current Subdivision Regulations shall be extended to January 11, 2016.

Thank you for your assistance in this matter.

Very truly yours,

Duane P. Landreth

cc: Lisa Maria Tobia, Chairman, Truro Planning Board (by regular mail)
John McElwee (via e-mail)



**La Tanzi
Spaulding &
Landreth, P.C.**

8 Cardinal Lane
P.O. Box 2300
Orleans, MA 02653
T: 508.255.2133
F: 508.255.3786
www.latanzi.com

Duane P. Landreth
Direct Line: 508.255.2133, ext. 138
dlandreth@latanzi.com

October 19, 2015

Lisa Maria Tobia, Chair
Truro Planning Board
24 Town Hall Road, P.O. Box 2030
Truro, MA 02666

Re: Planning Board 2015-008PB

Dear Ms. Chairwoman and Members of the Board:

This letter is written on behalf of the Secrest Family Trust about its recently filed preliminary subdivision plan, specifically in response to a letter dated October 5, 2015 by Charleen Greenhalgh, the former Town Planner.

In the second paragraph, Ms. Greenhalgh states that the Planning Board does not have the authority to waive the width of way standard for access to the proposed subdivision under the Truro regulations. She opines that a variance would be required from the Zoning Board of Appeals.

I agree that would be true if the applicant were seeking to create two conforming lots with frontage on Old King's Highway by an ANR plan. However, it misstates the authority of the Planning Board in regulating exterior access and the flexibility afforded it in shaping development. For reference purposes, the proposed subdivision is a Type "A", since it has between 1 and 4 lots, see definition of "Road/Street" at Section 1.6 of the Subdivision Rules and Regulations, amended through September 13, 2011 ("Subdivision Rules"). The standards for design of roads for various subdivision types are set forth in Appendix 2; Table 1 of the Rules. "Adequate Access to the Site" is covered at Section 3.9, which says that the Board can disapprove a plan if it determines that the road, which serves as access, is not adequate to carry the volume of traffic anticipated for the new subdivision. Applicant must also demonstrate that exterior access is adequate for emergency vehicles and the projected volume of traffic. The Board can require improvements in adjacent streets to improve access and is directed to consider Section 3.6.8 as design standards.

Section 3.7 gives the Board the power to modify the design standards of Section 3.6.8. It states that when a subdivision involves land of a rural character, the Board can waive the strict requirements of Section 3.6.8 for a road servicing no more than four dwellings. The



Lisa Maria Tobia, Chair
Truro Planning Board
October 19, 2015
Page - 2 -

Board has the power to impose conditions under Section 3.7 to make certain that the road remains rural and also serves the public interest. The Section also says that in no instance can the width of the road surface be waived. The implication is clear that the Board can waive the width of layout standards of Section 3.6.8 in the case of a rural road.

What applicant proposes by his plan is to widen the abutting portion of Old King's Highway to 20 feet by dedicating some of its land, and the applicant will create an improved roadway surface of 14 feet which fully conforms to Section 3.6.8 and Appendix 2, Table 1.

This interpretation is supported by Rule 1.2 which says the purpose of the Rules is to enhance the safety, convenience and welfare of the Town's inhabitants. The proposed subdivision cul-de-sac provides a safe turnaround for emergency vehicles which the neighborhood does not currently have. The 600 feet of roadway surface improvement along the portion of Old King's Highway abutting the Secrest land will enhance the public convenience without affecting the rural character of the land.

The Subdivision Control Law, Mass. G.L. c. 40A, Section 81K et seq. explicitly states at Section 81M that the powers of this Board are to be exercised to provide adequate access to lots within a subdivision. That goal is mirrored in the Rules as referenced in Sections 3.7 and 3.9, discussed above. The Planning Board is the proper body to consider the issue of adequacy of exterior access; the Rules provide the necessary guidance. To read them to limit its jurisdiction over the issue in favor of the Zoning Board of Appeals is an improper reading. The Zoning Board's task is to consider frontage on ways established by the Planning Board after the fact.

The Secrest Family Trust respectfully requests that this Board determine that it retains the power to waive access road layout requirements so long as the improved roadway surface standard is met.

Thank you for your attention to this matter.

Very truly yours,


Duane P. Landreth

cc: Carol Ridley, Ridley and Associates, Inc.
John McElwee, Coastal Engineering

RE: Secret Preliminary Subdivision Plan

Jonathan Silverstein <JSilverstein@k-plaw.com>

Wed 11/18/2015 1:42 PM

To: Carole Ridley <cr Ridley@truro-ma.gov>; 'Carole Ridley' <cr@ridleyandassociates.com>;

Cc: Rae Ann Palmer <rpalmer@truro-ma.gov>; John Giorgio <JGiorgio@k-plaw.com>;

Good afternoon, Carole:

Following up on our conversations yesterday and this morning, please see my responses to your two questions, in the text of your email below.

Please do not hesitate to contact me with any further questions. I look forward to seeing you this evening.

Best,

Jonathan

Jonathan M. Silverstein
Kopelman and Paige, P.C.
101 Arch Street
12th Floor
Boston, MA 02110
(617) 556-0007 (main)
(617) 654-1729 (direct)
(617) 654-1735 (fax)
jsilverstein@k-plaw.com

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From: Carole Ridley [mailto:cr Ridley@truro-ma.gov]
Sent: Saturday, November 14, 2015 7:24 AM
To: Jonathan Silverstein; 'Carole Ridley'
Cc: Rae Ann Palmer
Subject: Re: Secret Preliminary Subdivision Plan

Jonathan -

Welcome back, I hope you had an enjoyable trip.

In follow up to our conversation on Wednesday about the Secret Preliminary Plan:

1. A deed has been located which indicates a restriction on subdivision. I have attached the Planning Board packet for this application, which contains the deed. The size of the parcel referred to in the deed matches parcel 120.

What weight should the board give this deed restriction? Can the Board act on this application in light of the restriction? Is the Board within its rights to refuse to hear the application and, if so, are there any concerns you would have about this course of action? For future applications, are there general rules with respect to how to treat deed restrictions that the Board should consider?

In my opinion, the Board can and should take action on the application, notwithstanding the language in the deed restriction. As discussed below, the deed restriction may provide a basis for the Board to deny plan approval, but this does not mean that the Board should not follow the process set forth in the Subdivision Control Law. Pursuant to G.L. c.41, §81S, the Planning Board is required to approve, approve with conditions or deny any preliminary plan submitted to it, and must notify the applicant and Town Clerk of such decision within 45 days of submission of the preliminary plan. There is no provision in the law for a board to decline to consider or issue a decision on an application for any reason. Arguably, failure to comply with submission requirements of the Board's Rules and Regulations (e.g. filing fee, number and form of plans, etc.) could entitle the Board to deny a submittal on that basis, but even in such circumstances, I recommend that the Board follow the process of the statute and issue a timely opinion.

This advice is more important in the context of a definitive plan submission, of course, than with respect to a preliminary plan submission. If the Board were refuse to hold a hearing or issue a decision on a definitive plan submission, it would run the risk of the plan be deemed constructively approved. Instead, where the Board has a concern (in this instance the deed restriction) that may justify denial of an application, I recommend that this concern be addressed during the Board's deliberations and in the Board's decision, rather than treating it as a basis to take no action on the submission.

*Turning to the specific deed restriction at issue, I note that it precludes subdivision of one of the two parcels comprising the proposed subdivision and states that it is "for the benefit of the grantors' remaining land" located to the north of (and across Old Kings Highway from) the subject parcel. It is well settled that a planning board has the authority to require an applicant for subdivision approval to demonstrate ownership of the land to be subdivided. See *Batchelder v. Planning Board of Yarmouth*, 31 Mass. App. Ct. 104,107-108 (1991). Further, it may require that an applicant demonstrate the right to use and improve a proposed private access road leading to the subdivision. See *Parker v. Black Brook Realty Corp.*, 61 Mass. App. Ct. 308, 311, 809 N.E.2d 1086, 1088 (2004).*

However, where an applicant demonstrates ownership of the parcel proposed to be subdivided, and others argue that there the subdivision would interfere with their adverse property

rights, the Board is not expected to adjudicate this private property dispute. See *Hahn v. Stoughton*, 24 Mass. App. Ct. 553, 555-56 (1987). In *Hahn*, the abutters appealed a definitive plan approval, arguing that the approval was inconsistent with easement rights they claimed in the subject property. The Appeals Court rejected this argument, noting that the “developer is the record title holder and, therefore, may apply for subdivision approval.” *Id.* The Court went on to note that “if and when the easement is shown to exist, persons having standing to prevent obstruction of the easement will have ample opportunity to protect their rights. *Id.*”

2. Assuming that the presence of the deed restriction does not disqualify the application, there is the question previously discussed of whether you agree with Attorney Landreth’s argument (his letter is in the packet) about the Planning Board’s ability to waive strict compliance with the 40 ft layout and shoulder for Old King’s Highway. Old King’s Highway connects with the new way/cul de sac providing frontage to the two newly configured lots. Note that the applicant’s description and revised plan indicate that the new way/cul de sac would have a 40 ft layout. The applicant proposes to improve a portion of Old King’s Highway along their property, but it would not meet town standards for the 40 ft layout and shoulders. Charleen advised the applicant (her letter is also in the packet) that they would need to go to the ZBA for a variance. Attorney Landreth argues that the Planning Board could grant this relief.

As I previously opined, the Board does not have the ability to waive provisions of the Zoning Bylaw. As you know, Section 10.4 of the Zoning Bylaw (definition of “Street”) requires (by incorporating a provision of the prior version of the Board’s Subdivision Rules & Regulations) that a street have at least a 40-foot layout if it is “to be used for lot frontage.” Based upon the documents with which you have provided me, it appears that the lot frontage for the proposed subdivision will be provided by the proposed subdivision roadway—and not Old Kings Highway—which will have at least a 40-foot layout. Based upon this information, it is my opinion that no zoning variance would be required from Section 10.4. Any other provision of the Board’s Rules and Regulations, which has not been incorporated into the Zoning Bylaws, may be waived at the discretion of the Board. See G.L. c.41, §81R. Since Old Kings Highway does not provide the lot frontage for the subdivision lots, provisions relating to improvement of adjacent ways set forth in Section 3.9 would be among the provisions that the Board may waive, in my opinion.

I checked and Old King’s Highway is on the list of Town of Truro roads.

Please let me know if you have any questions about this information.

Thanks,
Carole

From: Jonathan Silverstein <jsilverstein@k-plaw.com>
Sent: Saturday, October 31, 2015 11:25 PM
To: 'Carole Ridley'
Cc: Rae Ann Palmer; Carole Ridley
Subject: RE: Secrest Preliminary Subdivision Plan

Carole,

In my opinion, the Planning Board has the authority only to grant waivers of its subdivision rules and regulations. The Board does not have the authority to way zoning. Pursuant to the definition of the term “Street” set forth in Section 10.4 of the Town’s Zoning Bylaw, “[w]hen a street(s) is to be used for lot frontage, the street(s) shall conform to the requirements of the Town of Truro Subdivision Regulations, Section IV, Design Standards, (b), (c), & (d), as they existed on January 1, 1989.” I am informed that among these requirements is a layout width requirement of at least 40 feet. Therefore, the Zoning Bylaw appears to require at least a 40-foot right of way for any street that is to provide frontage for purposes Section 50.1 of the Zoning Bylaw.

Though the Board has the ability to waive its own Regulations, where those Regulations are specifically incorporated into the Zoning Bylaw, it is my opinion that they cannot be waived for zoning purposes. It is well settled that noncompliance with zoning is a valid ground for the denial of subdivision approval. See *Beale v. Planning Board of Rockland*, 423 Mass. 690 (1996); *Arrigo v. Planning Board of Franklin*, 12 Mass. App. Ct. 802, 804-806 (1981); G.L. c.41, §81Q. Therefore, under current zoning requirements, proposed new lots fronting on ways less than 40 feet in width would require relief in the form of a frontage variance from the Zoning Board of Appeals, in my opinion.

Please do not hesitate to contact me with any further questions regarding this matter.

Jonathan M. Silverstein
Kopelman and Paige, P.C.
101 Arch Street
12th Floor
Boston, MA 02110
(617) 556-0007 (main)
(617) 654-1729 (direct)
(617) 654-1735 (fax)
jsilverstein@k-plaw.com

This message and the documents attached to it, if any, are intended only for the use of the addressee and may contain information that is PRIVILEGED and CONFIDENTIAL and/or may contain ATTORNEY WORK PRODUCT. If you are not the intended recipient, you are hereby notified that any dissemination of this communication is strictly prohibited. If you have received this communication in error, please delete all electronic copies of this message and attachments thereto, if any, and destroy any hard copies you may have created and notify me immediately.

From: Carole Ridley [<mailto:cr@ridleyandassociates.com>]
Sent: Thursday, October 22, 2015 4:38 PM
To: Jonathan Silverstein
Cc: Rae Ann Palmer; Carole Ridley
Subject: Secrest Preliminary Subdivision Plan

Jonathan -

Rae Ann suggested that I contact you directly to request your review of a legal matter related to the above referenced application. Three files are attached to this email. One file contains a copy of the application, a letter that Charleen wrote to the applicant’s engineer, a memo from the Health Agent, and an assessors map. A separate file contains a letter from the applicant’s attorney addressing the points in Charleen’s letter. The third file is a photo of the plan (I will send the electronic version of the plan once received).

Essentially, the applicant is seeking to reconfigure two lots from roughly an E-W orientation to a N-S orientation and, by extending a way and creating a cul de sac, provide frontage for one of the lots that is now landlocked.

I should note that a number of abutters have sent letters or stopped by the office to express concern and/or opposition to the plan.

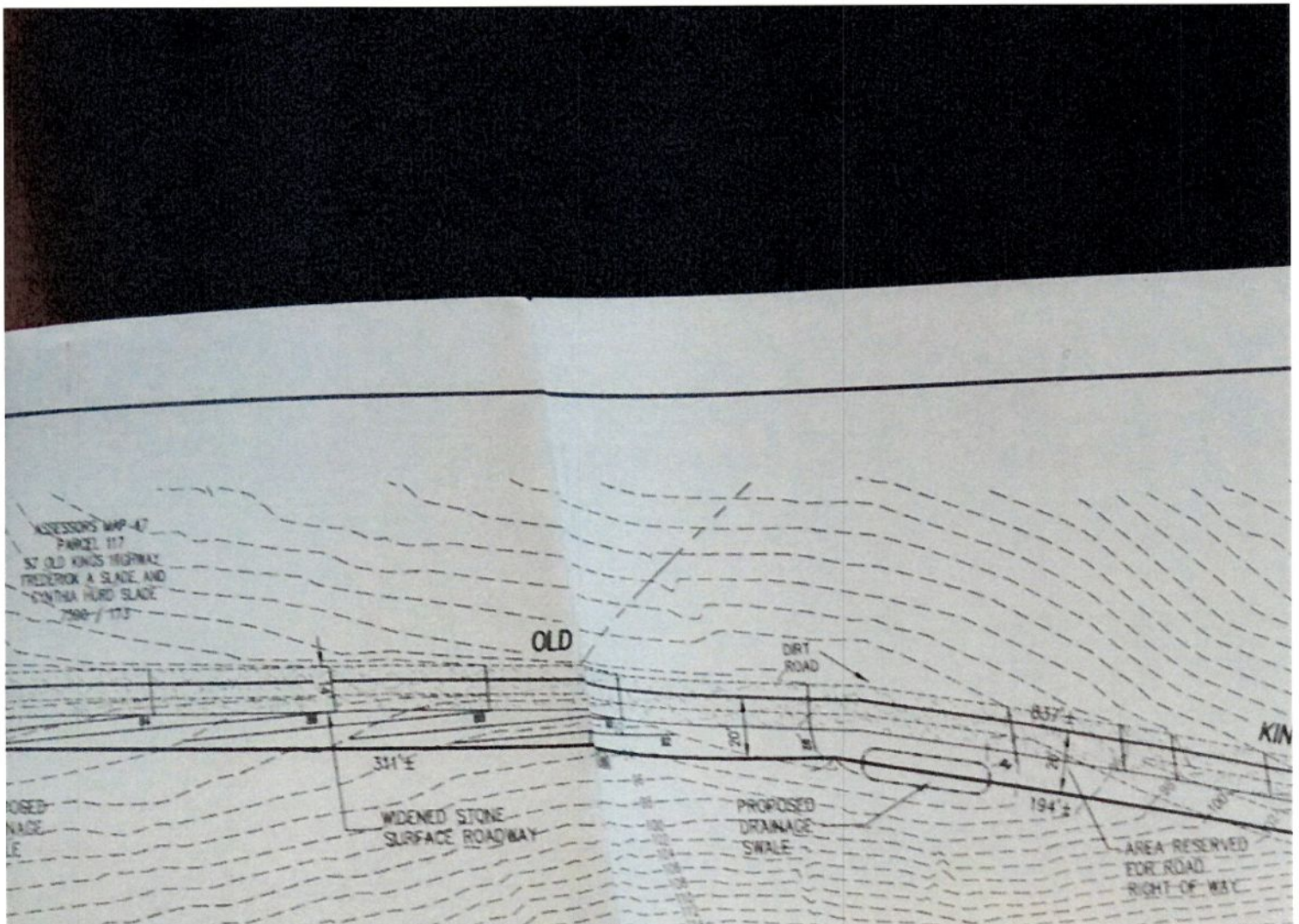
Charleen's letter takes a position that I have heard from the Building Commissioner also, that in order for the newly reconfigured lot to have frontage, the cul de sac and the extension of the way would need to meet the town's road standards or, if they do not, then relief from the Board of Appeals is required. As you will see, the applicant's attorney is making a case that the Planning Board has the authority to grant a requested waiver of strict compliance with the standards.

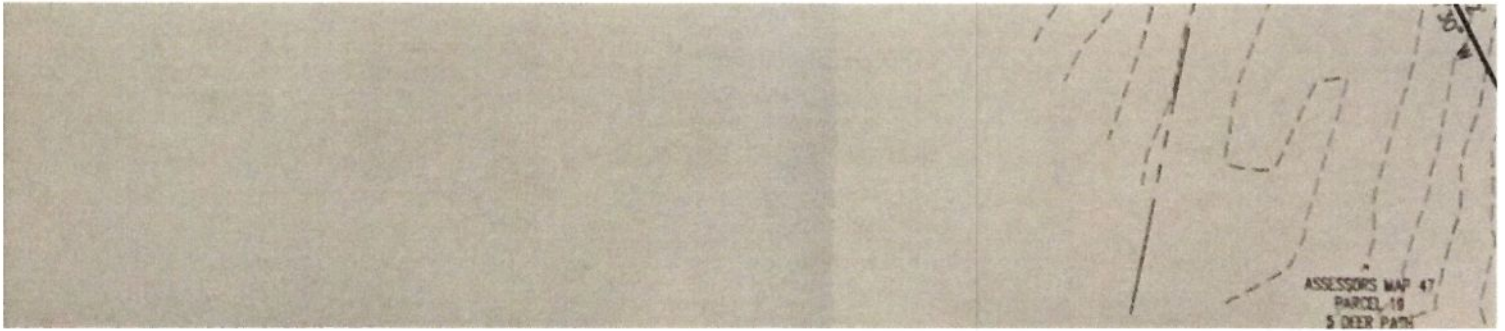
Charleen's letter also requests that an updated plan be provided showing dimensions of the cul de sac. I followed up with the engineer requesting the updated plan to include the road dimensions as well as the missing septic system data identified in Pat Pajaron's memo. At first he said he would be updating the plan, but yesterday told me he would not be updating the plan.

Your assistance in responding to the points in Attorney Landreth's letter would be appreciated. Please feel free to highlight any other issues you may see as being significant. I am available if you would like to discuss. This is scheduled for the November 4th meeting.

Thanks,
Carole

Ridley & Associates, Inc.
115 Kendrick Road
Harwich, MA 02645
(508) 430 2563 (office)
(508) 221 8941 (cell)
(508) 432 3788 (fax)
www.ridleyandassociates.com





Begin forwarded message:

From: Kathleen O'Keefe <KOKeefe@latanzi.com>

Subject: From the office of Duane P. Landreth, Esq.

Date: October 19, 2015 3:41:14 PM EDT

To: "jmcclwee@coastalengineeringcompany.com" <jmcclwee@coastalengineeringcompany.com>, "cr@ridleyandassociates.com" <cr@ridleyandassociates.com>

Re: PB 2015-008PB

Duane P. Landreth, Esq.
La Tanzi, Spaulding & Landreth, P.C.
8 Cardinal Lane, P.O. Box 2300
Orleans, MA 02653-2300
(508) 255-2133; (508) 255-3786 - Facsimile
dlandreth@latanzi.com

This message contains information from the law firm of LaTanzi, Spaulding & Landreth, P.C. that may be confidential or privileged. This message is directed only to the individual or entity named above. If you are not the intended recipient, please be aware that any disclosure, copying, distribution, or use of the contents of this email is prohibited. If you have received this email in error, please notify the sender immediately and delete the message and any attachments.

Required IRS Disclosure: Any tax advice contained in this communication, including attachments, is not intended or written to be used, and cannot be used by any taxpayer, for the purpose of avoiding penalties under the Internal Revenue Code or promoting, marketing or recommending to another party any matters addressed herein.

December 17, 2015

Ms. Lisa Maria Tobia
Planning Board Chairman
Town of Truro
P. O. Box 2030
Truro, MA 02666

Re: Secrest Family Trust, matter 2015-008PB

Dear Ms. Tobia:

I understand that this matter, which was discussed at the November 18, 2015, meeting, has been postponed for decision until January 5, 2016.

My opposition to this request for preliminary subdivision approval was made clear in my previous letter to you and members of the Planning Board. However, I understand that the various letters in opposition to this request were not read into the record (so members of the public could understand what the issues might be). I assume the correspondence, which was hand delivered and mailed to Town Hall, was shared with the Planning Board members.

Please be sure everyone, PB members and the public, at the January 5 meeting have access to opposition correspondence. Although it may be late to speak out again on this, I've listed several items below that might be pertinent:

1. Old Kings Highway is an ancient way one rod wide. I own to the middle of the road, as do others. It is really unclear if this is a "public" road and whether the Town of Truro has any interest in it.
2. This approval would set a dangerous precedent; there are several large properties with frontage on OKH that might want to subdivide if this one is approved.
3. This section of OKH goes in and out of the National Seashore and it is uncertain if they would welcome "improvement" of the road in this area.
4. There are other like-kind roads in Truro (e.g. Stephens Way) where owners of larger tracts might use this, if approved, as a reason to seek their own approvals.

Let's keep some of "Old Truro" intact, please. Thank you.

Sincerely,



Diane LaFrance
68 and 66 Old Kings Highway
Truro, MA 02666

Mail: 44 Owens Road
Silver City, NM 88061

§ 40.6. Growth Management

A. Purpose. The purpose of § 40.6 of the bylaw is to control the pace of the Town's growth so that build-out will be gradual. This will provide: 1) an opportunity to purchase and protect open spaces, thereby reducing the Town's ultimate density and preserving, as much as possible, the Town's rural character; 2) the time for the Town to adequately study, assess, and possibly regulate the impact of continued development on the Town's existing roads and water quality; and 3) protection for the Town from a sharp acceleration of population growth that could suddenly overwhelm our current public services. This section, § 40.6, shall expire on December 31, 2016.

B. Residential Development Limitation.

1. There shall be no more than forty (40) building permits for new single family dwelling units authorized within any calendar year, beginning January 1 and ending December 31. Permits not issued within the calendar year may be carried over and added to the next calendar year's quantity. This bylaw shall be effective as of March 3, 2006.
2. The Building Commissioner shall issue building permits in accordance with the following:
 - a. For the purposes of this section, an application shall be accepted for review only if it conforms to all applicable building and zoning requirements, and has received all necessary approvals from pertinent Town boards, including the Board of Health, Planning Board, Board of Appeals, Conservation Commission, and so forth.
 - b. Applications for building permits for single family dwelling units certified complete by the Building Commissioner shall be dated and time-stamped upon determination of completeness. Building permits shall be issued on a first-come/first-served basis.
 - c. Within any calendar month, no more than six (6) permits for single family dwelling units may be issued. Permits not issued during one month may be carried forward and issued the next month, assuming it is within the same calendar year.
 - d. No applicant may have more than one (1) application processed for a single family dwelling unit in any given month.
 - e. No more than four (4) building permits for single family dwelling units shall be issued to any one applicant within a single calendar year unless 1) there are available permits within the yearly limit and 2) no other applicant has applied for them before the fifteenth day of December.

C. Exemptions.

1. Construction of affordable housing units provided such housing units have deed restrictions to ensure they remain affordable for the maximum period permitted under Massachusetts law. Occupancy permits for such affordable units are not to be issued until the restricted deed has been recorded or registered.
2. A presently existing structure which is otherwise subject to this bylaw but which is destroyed by fire or other calamity. Such a structure may be rebuilt outside of these limitations as long as: 1) the structure is not expanded beyond one additional bedroom; 2) it complies with all other provisions of these bylaws; and 3) so long as application for a building permits is submitted within two (2) years of the destruction.
3. A presently existing structure which, following demolition, is being rebuilt to no more than one hundred twenty-five percent (125%) of its current footprint. Such a structure may be rebuilt so long as: 1) the structure is not expanded beyond one additional bedroom; 2) it complies with all other provisions of these bylaws; and 3) the application for a building permit is submitted within two (2) years of the existing structure's demolition. (4/06)

Memorandum

To: Planning Board
Fr: Carole Ridley
Date: December 29, 2015
Re: Potential Amendment to Temporary Sign

Regulation of temporary signs is set forth in section 11 of the Sign Code:

Section 11. Temporary Signs, etc.

The Planning Board may issue permits for temporary signs. Any such permit shall be limited to holiday or special events, and shall be limited to a period of fifteen (15) days, for events lasting one day or two days. For said events having multiple dates such permits shall be limited to a period of thirty (30) days. Not more than four (4) signs shall be erected with respect to any such event. Any such sign shall be firmly attached to a supporting device and shall not present a hazard to the public. Posters intended for window display are exempt from this provision.

It has been noted that Section 11 does not provide for a limit on the size of any sign so permitted. Even without the limit the Board has the discretion not to permit a temporary sign if it feels that the sign poses a hazard to the public. In the case of an overly large sign, this could mean that it obstruct motorists' views or perhaps could not be adequately fastened to prevent blowing away. However, establishing a limit could prevent requests for and permitting of excessively large temporary signs that could pose safety concerns. Aspects of size include total face area, maximum dimensions, and maximum distance from ground level.

Size limits for signs are found elsewhere in the sign code, including:

- Ground signs (except Shopping Centers or Plazas) – one singled faced not to exceed 20 sf total face area or one doubled faced sign not to exceed 40 sf total face area, and not to exceed 12 feet from the original mean ground level
- Public information signs – three feet square
- Roadside traffic directional signs – three feet square with a maximum height of three feet above existing grade

Recent permit applications have requested a variety of temporary sign sizes and dimensions, with the largest overall being 8' high and 4' wide.

- 33" h x 22" w
- 96" h x 48" w
- 50" h x 30" w
- 36" h x 24" w
- 48" h x 36" w
- 9" h x 39" w posted for total height of 48"
- 72" h x 36" w
- 21" h x 8' w
- 2' h x 8' w
- 8' h x 33" w
- 6' h x 33" w

**MEETING MINUTES
TRURO PLANNING BOARD**

ONSITE VISIT in relation to 2015-012PB Irving and Carol Ziller, Definitive Plan, for property located at 1 & 1A QUAIL RIDGE ROAD, TRURO, MA,
Tuesday, December 22, 2015, 10:00 AM

Attending: Lisa Maria Tobia, Jack Riemer, Peter Herridge, Carole Ridley
For the applicant: Chet Lay, Drew Locke

Those present walked the staked area of the subdivision road and viewed general site conditions. The site visit concluded at 10:15 am.

Respectfully Submitted:

TRURO PLANNING BOARD

DRAFT

Meeting Minutes

December 22, 2015 - 6:00 pm

Truro Town Hall

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

Members Absent: Steve Sollog (excused)

Other Participants: Chet Lay; Geoffrey Doherty; Susan Ziller Doherty; Jeanne Foulke; Ben Zehnder, Esq.; Carole Ridley, Planning Consultant

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.

No one from the public came forward to comment.

Review and Approval of Meeting Minutes

On a motion by Mr. Boleyn and seconded by Mr. Roderick, the minutes of November 18, 2015 were approved, so moved 6-0-0.

On a motion by Mr. Herridge and seconded by Mr. Boleyn, the December 7, 2015 Planning Board Special Meeting were approved, so voted 6-0-0.

On a motion by Mr. Riemer and seconded by Mr. Herridge, the Board moved to reconsider the approval of the minutes of November 18, 2015 as written, so voted 5-1-0 (Mr. Roderick opposed). Upon discussion, Mr. Riemer stated that he wanted to the minutes to be amended on page 2 to "he took an 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."

On a motion by Mr. Boleyn and seconded by Mr. Herridge, the minutes from the November 18, 2015 minutes were approved as amended, so voted 6-0-0.

On a motion by Mr. Boleyn and seconded by Mr. Herridge, the December 7, 2015 Joint Meeting with the Zoning Board of Appeals were approved as written, so voted 6-0-0.

On a motion by Mr. Boleyn and seconded by Mr. Herridge, the minutes from the November 16, 2015 Onsite visit were approved as amended to include that Mr. Hopkins was in attendance, so voted, 5-0-1 (Mr. Roderick abstained).

On a motion by Mr. Herridge and seconded by Mr. Boleyn, the minutes from the December 1, 2015 Onsite visit were approved, so voted 4-0-2 (Mr. Roderick and Mr. Riemer abstained).

Reports from Board Members and Staff

- Follow –up on Joint Meeting with the ZBA
 - Joint Committee on Affordable Accessory Dwelling Unit-Ms. Ridley reported she consulted with Ms. Palmer, Town Administrator who is willing to appoint the committee but is looking for guidance from the Board for the make-up of the committee .Mr. Zehnder suggested that the ZBA should be consulted if they want to be part of the committee because of their judiciary role in interpreting the bylaws. Mr. Hopkins developed a spreadsheet illustrating the developable lots in Truro which he distributed to Board members. Mr. Zehnder asked if there would be a warrant this spring on this issue. Ms. Tobia and Ms. Ridley stated that they are working on this issue but it is unknown if it will be possible to have something ready for the spring Town Meeting.
 - Street definition: clarification of issues and process-Ms. Tobia distributed material for the Board’s consideration. Ms. Tobia reported there was also a meeting with several key parties such as ZBA, the Building Inspector to begin to gather more information. Regulations prohibit this issue to be brought again to Town Meeting this year but because the Planning Board has heard from many citizens, they want to continue to work on it. Mr. Lay expressed his concern that there will be many cases before the ZBA based on the 1989 town requirement for a 20 foot turning radius.

Further discussion under Reports from Planning Board Members and Staff was suspended until after the scheduled public hearing.

6:15 pm Definitive Subdivision Plan-Public Hearing

2015-012PB Irving and Carol Ziller seek approval of a Definitive Plan pursuant to MGL c41, Section §81T and §81U, 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 as 1 and 1A Quail Ridge Way, Truro, and shown on Truro Assessor’s Map 43, Parcels 27 & 28.

Representatives: Chet Lay, Slade Associates; Ben Zehnder, Esq.

Mr. Lay reported that preliminary approval was given in July 10, 2012 and the delay has been due to gaining legal access over Quail Ridge. Board of Health approval was given last week. They are seeking approval under the Rural Road Alternative. He reviewed the request and the results of the onsite visit done earlier this day. Mr. Lay reviewed the waivers and Mr. Zehnder reviewed the negotiated agreement with the Quail Ridge homeowners association. Ms. Tobia read the letter from Deborah McCutcheon, representing the Quail Ridge Homeowners Association in support of the application.

Mr. Herridge would like to see as a condition of approval that there will be no future further development of Parcel F. He also requested clarification on whether a waiver from the requirement for screening under 3.6.7. Mr. Lay explained that a waiver from a landscape plan was being requested and that the plan incorporated buffers to adjacent property. Further, Mr. Herridge expressed his concern that there is insufficient information provided for how the waivers address the public interest and not inconsistent with the intent and purpose of the subdivision rules and regulations.

Mr. Riemer reviewed his concerns with the lack of a 20 foot radius on both sides of the intersection, lack of an 80 foot turnaround for safety vehicles and upholding the Truro Comprehensive Plan when it comes to approving subdivisions.

Mr. Hopkins asked for clarification about the number of lots and the potential for two more buildable lots.

Mr. Geoffrey Doherty came forward to state that the roads, Quail Ridge Road, Quail Ridge Way, the proposed Ziller Path and Short Lots Lane are all private and the burden for maintaining them and for snowplowing is not with the town.

Ms. Ridley reviewed the Board's option to condition for approval that this road will serve only one lot. In addition, she stated that both the police and fire departments expressed no concerns with this plan.

Ms. Tobia clarified the DPW concern for clearing required for cutting into the grade and that there would be no need for a retaining wall. Mr Lay confirmed that the slopes would be loamed and seeded and no retaining wall would be needed.

Mr. Herridge again expressed his concern over not having the required 25-foot buffer. Mr. Hopkins disagrees, as he sees this road as a driveway serving one lot.

Mr. Hopkins moved and seconded by Mr. Roderick that the following informational requirements be waived:

- 2.5.2a.6 drainage calculations
- 2.5.2a.9 traffic impact study
- 2.5.2a.10 three proposed road names
- 2.5.2b.5 existing and proposed methods of providing road drainage and utilities
- 2.5.2B.10 topographical contours (shown on preliminary plan)
- 2.5.2b.14 base flood elevation
- 2.5.2. b.16 grades, widths, locations, sight distances, physical condition of existing roadways
- 2.5.2.b.22 two onsite USGS benchmarks
- 2.5.2b.24 all information required on preliminary plan
- 2.5.2.b.30 location of all trees 10" in diameter
- 2.5.2.c.1 & 2 scales of profile plan
- 2.5.2.c. 4 & 5 right and left side grades
- 2.5.2.c.11 limits of clearing
- 2.5.2.c.12 water main data
- 2.5.2.c.13 utilities and drainage on profile
- 2.5.2.c.14 cross sections
- 2.5.2.c.15 landscape plan
- 2.5.2.c.16 erosion control plan

and the following Roadway Standards from Appendix 2, Table 1, Type A Roadway be waived:

- 4.1 construction of circular turnaround
- 4.1.1 4' shoulders

Mr. Riemer reiterated that the supporting rationale should be provided when the waiver requests are filed. He would also like to see 4 foot berms. Mr. Riemer also expressed his desire to see a circular turnaround, as if this road is being used for frontage, then it should meet the requirements.

Ms. Ridley pointed out that there was a revised list to the waivers submitted on December 21, 2015 which excluded 2.5.2.b.16 and 2.5.2.c 1&2. Mr. Hopkins and Mr. Roderick agreed to amend the motion by excluding those two waiver requests. The Board voted to approve the amended waiver request by a vote of 4-2-0 with Mr. Riemer and Mr. Herridge opposed.

Ms. Tobia reviewed potential conditions for approval of the plan decision and the conditions should be included in the covenant.

Mr. Herridge moved and seconded by Mr. Hopkins to approve the Definitive Plan and Method of Road Construction for Irving and Carol Ziller, as submitted Plan pursuant to MGL c41, Section §81T and §81U, 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 as 1 and 1A Quail Ridge Way, Truro, and shown on Truro Assessor's Map 43, Parcels 27 & 28 with the following conditions to be included in the covenant along with waiver requests:

1. Ziller Path is approved to provide access for only one buildable lot, Parcel D
2. Parcel F is not a lot under the Truro Zoning Bylaws
3. Road bed will be 14 feet wide with a 6 inch hardened base and 3 inch gravel surface. The maximum grade for the road will not exceed 5%
4. Limitation on site clearing to accomplish road grade
5. Lot D will be subject to nitrogen loading limitations
6. Filing with NHESP and incorporation of any conditions they may issue to ensure that the project will not result in a take of state listed species
7. Performance guarantee via a covenant stipulating the terms of road construction and including all conditions and waivers.

Mr. Riemer expressed his concern that approval of this plan may result in a zoning violation regarding a turning radius requirement. It was suggested that a condition be added that the Building Commissioner must be consulted to determine if turning radius is compliant with zoning and if not, the applicant will amend the plan to be compliant with zoning.

Mr. Herridge and Mr. Hopkins agreed to amend the motion to include the condition of consulting with the Building Commissioner.

The motion to approve the Definitive Plan and Method of Road Construction with the conditions above was approved, so voted 6-0-0.

Reports from Planning Board Members and Staff Resumed

- FY2017 Planning Board Budget-correct budget is in the Board packet

- Schedule Planning Board workshop-Ms. Tobia would like to conduct a workshop for the Board, not a meeting to discuss needs in light of the new members and change in staff support. Also, any educational needs that Board members feel they may need. Ms. Ridley will make some suggested dates and times for this during the first part of January.
- Other-Mr. Herridge will join the CPC later in the spring. Ms. Ridley distributed some informational materials for the Board. Packets will be available on Friday rather than Wednesday to allow for any late submitted paperwork to be included. Ms. Ridley clarified the procedure on how final decisions filed. Mr. Riemer reported on the Seashore subcommittee work and the recommendations will be forward to the Board of Selectmen.

On a motion by Mr. Roderick and seconded by Mr. Herridge, the meeting was adjourned.

Respectfully submitted,

Shawn Grunwald
Recording Secretary

**OFFICE OF
TOWN CLERK
TREASURER - COLLECTOR OF TAXES
TOWN OF TRURO, MA 02666-2012**

GENERAL & ZONING BY-LAW AMENDMENTS

The **general by-law amendment (Article 19)** and the **zoning by-law amendments (Articles 20 and 21)** adopted at Annual Town Meeting, April 28, 2015 were approved by Kelli E. Gunagan, Assistant Attorney General, on **December 14, 2015** / Case #7741.

Claims of invalidity of the foregoing amendments to the **zoning by-law**, by reason of any defects in the procedure of adoption or amendment, may only be made within ninety (90) days of posting.

22nd

Date of posting, December 22, 2015.

Additional copies of the amendment may be examined and obtained at the office of the Town Clerk, Truro Town Hall, 24 Town Hall Road, Truro, MA 02666 or on the town website www.truro-ma.gov



Cynthia A. Slade
Town Clerk, Town of Truro
508.349.7004 x14

I have posted duly attested copies thereof at the following places: Grozier's Garage, Lower Cape Auto & Truck Repair, Savory & Sweet Escape, Pamet Valley Liquors, Truro Post Office, N. Truro Post Office, Truro Public Safety Facility, Truro Public Library, Truro Transfer Station, Truro Central School, Truro Community Center, and Truro Town Hall.



Constable

12-22-2015

Date

cc: Board of Selectmen
Town Administrator
✓ Temporary Planner
Town Accountant
Building Commissioner
Planning Board
Board of Appeals

Form 2 (#2)
TOWN MEETING ACTION/ TOWN OF TRURO

ANNUAL TOWN MEETING, APRIL 28, 2015

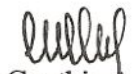
ARTICLE 19: AMEND GENERAL BYLAWS TO BAN SMOKING ON TOWN BEACHES To see if the Town will vote to amend the General Bylaws of the Town of Truro by repealing Chapter III Public Health Section 5, subsection 3-5-1 which reads "Smoking shall be prohibited on all public places as provided in MGL ch. 270, s. 22" and by inserting in its place as the new subsection 3-5-1 the following "Smoking is prohibited in all places designated in Massachusetts General Laws Chapter 270, Section 22, and on all town-owned beaches", or take any other action relative thereto. *Requested by the Board of Selectmen and the Beach Commission*

Beach Commission Recommendation: 4-0-0 in favor
Board of Selectmen Recommendation: 5-0-0 in favor

Comment: *The Beach Commission has voted in favor of banning smoking at Town beaches. This would be consistent with the National Seashores prohibition of smoking on beaches with the desire to eliminate cigarette butts and other smoking waste on the beaches.*

Motion to move Article 19 as printed in the warrant and delete the words, "or take any other action relative thereto. Call for the question – vote on Article 19: 112 YES, 101 NO motion passes.

So certified,


Cynthia A. Slade
Town Clerk, Town of Truro
May 28, 2015

Form 2 (#2)

TOWN MEETING ACTION/ TOWN OF TRURO

ANNUAL TOWN MEETING, APRIL 28, 2015

ARTICLE 20: ZONING AMENDMENT - §30.2, NOTE 4 To see if the Town will vote to amend the Truro Zoning Bylaw, Section 30.2 Note 4, by deleting the existing language and replacing it with the following: "4. Uses in this category are further subject to the special regulations set forth in §40.5 and the Planning Board shall serve as the Special Permit granting authority", or to take any other action relative thereto. *Requested by the Planning Board*

Board of Selectmen Recommendation: 5-0-0 in favor

Planning Board Recommendation: 7-0-0

***Comment:** This is a housekeeping item to clarify and simplify the existing language. The intent of the language remains the same. The existing language to be deleted and replaced reads as follows: "4. Includes buildings and appurtenances; Special Permit Granting Authority is the Planning Board".*

Motion to move Article 20 as printed in the warrant and delete the words, "or take any other action relative thereto. Passes unanimously.

So certified,



Cynthia A. Slade
Town Clerk, Town of Truro
May 28, 2015

Form 2 (#2)
TOWN MEETING ACTION/ TOWN OF TRURO

ANNUAL TOWN MEETING, APRIL 28, 2015

ARTICLE 21: ZONING AMENDMENT - §30.2, NOTE 6 To see if the Town will vote to amend the Truro Zoning Bylaw, Section 30.2 Note 6, by deleting the last portion of the final sentence, which reads “; the proposed accessory use need not be located on the same parcel as the primary use” or to take any other action relative thereto. *Requested by the Planning Board*

Board of Selectmen Recommendation: 5-0-0 in favor

Planning Board Recommendation: 7-0-0 in favor

***Comment:** This is a housekeeping item. The existing language and the language to be deleted read as follows: “6. The Board of Appeals may approve activities which are necessary in connection with scientific research or scientific development or related production, and which are accessory to a permitted use, if the Board finds the proposed accessory use does not substantially derogate from the public good; the proposed accessory use need not be located on the same parcel as the primary use.”*

Motion to move Article 21 as printed in the warrant and delete the words, “or take any other action relative thereto. Passes unanimously.

So certified,



Cynthia A. Slade
Town Clerk, Town of Truro
May 28, 2015