

**Truro Planning Board
Meeting Minutes- April 1, 2014
Truro Town Hall- 6:00 pm**

Members Present: Karen Snow (Chair), Bill Worthington, Leo Childs, John Pendleton, Lisa Tobia, Chris Lucy and Bruce Boleyn

Others Present: Charleen Greenhalgh ATA/ Planner, Steven Sollog, Bruce Edmands, Don Poole, Gloria Harris Cater, Dr. Willie Cater, Paul Kiernan, Jack Riemer, Ben Zehnder, Fred Gaechter, Eliza Cox, Christopher Snow, Robert Perry, Bob Weinstein, Tom Frisardi, Lucy Clark, Joan Holt, Dave Clark, Nancy Thornley and John Thornley.

Ms. Snow called the meeting to order at 6:15pm.

Truro Concert Committee - Temporary Sign Application

Truro Concert Committee seeks approval of a Temporary Sign Permit Application for one double sided 21" x 96" banner to be located at the junction of Route 6 and Shore Road on the existing frame. The sign would be installed June 26 and removed August 30, 2014. Mrs. Greenhalgh spoke on behalf of the committee stating that in her opinion the committee is exempt from the permit requirement as it is a Town Committee. The Board discussed the length of time the sign would be displayed. Mr. Boleyn moved to grant a temporary permit, seconded by Mr. Worthington. Mr. Pendleton in discussion stated that the permit exceeded the 30 day ordinance and would rather decide they don't need a permit. The motion was withdrawn. Mr. Pendleton moved to take no action seconded by Lisa Tobia voted on and approved 7-0-0.

2014-001 Willie J. Cater and Gloria J. Cater, 9B Benson Road, Definitive Subdivision

Representatives: Attorney Bruce Edmands, Don Poole, P.L.S and Dave Clark, P.E.

This is a continuation of a hearing from February 18, and March 4, 2014. The applicants seek for approval of a Definitive Plan pursuant to MGL c.40A, Section 81T 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 9B Benson Road, Truro and shown as Parcel 50 on Truro Assessor's Map, Sheet 53. The Application seeks approval of a single lot subdivision access to and egress from which will be served by a driveway located over a right of way as meeting the specifications set forth in a Judgment entered in the Commonwealth of Massachusetts Land Court.

Mr. Pendleton and Mr. Worthington recused themselves and sat in the audience. Mr. Lucy disclosed that he does work for the Town and for several abutters including the Truro Conservation Trust and the outcome on this road has no impact on his decision. No one expressed an issue with Mr. Lucy sitting. Ms. Snow stated that there have been communications to the members of the Planning Board that are occurring outside the proper channels. In the future all communications will be conducted through town staff.

Mr. Edmands stated the Caters have received communications and recognizes the interest is still vibrant after the nearly twenty years of the Caters trying to find a way to their property. Mr. Edmands feels the best way forward is to listen to the response from the Board. Put the universal concerns on the table and then proceed from there. Mr. Boleyn participated in the Site visit.

From the bottom of the hill the top was not visible and vice a versa, this is a safety issue of great concern. There is also a heavy burden on one of the abutters who would lose their view. Ms. Tobia thanked all who participated in the site visit stating the fill and guard rail proposal are intrusive to the natural elements and the aesthetic properties of the area. She spent extra time at the site to see if there is an alternate path which would be less intrusive. Waiving the Subdivision bylaws for a single lot roadway causes her great concern.

Mr. Childs' concern is the road and not the property. Mr. Childs stated he does not see where the applicant has met the requirements for a rural roadway. The applicant is asking for waivers for something that may not be able to exist. The road creation will require almost a 40' layout to stabilize the slope for a roadway. Ms. Snow echoed the Boards concerns that the application does not meet the requirements for a subdivision. Having the hearing under the heading of a definitive subdivision is misleading. If the Board proceeds then it will look as if the Board has stepped beyond its own powers to waive all the design standards for a definitive subdivision which doesn't meet the definition of definitive subdivision. The road as proposed is horrible and devastating to the surrounding environment. Ms. Snow stated the court has ruled that there is going to be a right of way to the property, after reading all the written documents provided in the history, the judge made his decision using the 2003 Coastal Engineering plan based on an assumption the house will be built at the highest point on the property, and that he cannot create an easement across the Cater property itself. The judge may have made a mistake concerning the driveway. The plan provided is not taking advantage of the judge's decision based on the 2003 Coastal Engineering Plan. The 2009 Coastal Engineering plan provides the best access; the least visual impact and least cut and fill. The 2009 plan is based on the Rural Road Alternative 14' width and 8% grade. If this plan was chosen the Board has the potential to waive width and grade to 12' and 10% respectively. The 2009 plan is the best choice. According to the court's decision only the Truro Conservation Trust and the adjacent abutters are involved in this negotiation. Lisa Tobia agreed with this assessment and stated that the road surface could be left without pavement. Mr. Boleyn asked if this revision in the street layout will cause the applicant to end up back in court.

Mr. Edmands spoke on behalf of Ms. Snow's remarks; the court assumed that the 2009 decision would result in more cut and fill. The location of the house site was an assumption by the Judge. He reiterated the law concerning court stipulated Right of Way, he does not hold much hope for reconciliation with the abutters. It is in everyone's interest to come together but this is the hand the Caters were dealt. Mr. Lucy questioned whether the Board has the ability to revise the plan for the road access. The response was that the Board should not consider an alternate route unless a written, signed agreement is presented by all parties. The Board should not perpetuate an alternate route. Ms. Snow stated that we are already looking at an alternate route. There was testimony at the trial from Tim Brady from East Coast Engineering which set the site of the house at the top of the hill 90' of elevation. Mr. Poole stated the plans that were before the judge showed the road straddling the two properties. This the best approach using the constraints given the courts determination.

Mr. Lucy reiterated his sense that through Town Counsel this Board should not act on a different plan. Mrs. Greenhalgh concurred with Mr. Lucy, stated unless there is a written agreement between all parties the Board should not act on a different plan. Ms. Snow stated there will be a

deadline. The court will not stand over the shoulder of any Boards decision in the process to finalize this decision. At this time the interested abutters were given a chance to speak.

Mr. Frisardi, attorney for Lucy Clark, stated that he is here to defend and fight for Ms. Clark's scenic view. The judge decided correctly on a single lot subdivision. The Board has the right to deny this application on requirements and denial is supportable. This is going forward but the Board can act in a mediating role. This Board is not constrained to approve the plan. Grade restriction can be waived. In a single lot subdivision the grade is unacceptable. Mr. Frisardi surmised that the 2009 plan came to the court late. It is feasible that this Board could approve a plan and the best compromise could go back to the Land Court. Mr. Frisardi offered a few technical points on subdivisions. The definitive plan only shows a cul-de-sac and no driveway. A subdivision plan needs to show access to the building site and since this plan does not show frontage. He would also ask for a heightened degree of security, a cash bond of funds to restore the abutter's property if there land is disturbed and no house is constructed. Ms. Snow stated that this Board will make sure that the area will be secured and this Board will address the state of the property.

Ms. Cox, Attorney for the Loffredo /Hershkoff property, stated that she firmly believes that the proposal before the Board shows utter disrespect for the natural beauty of the surrounding property. §3.3 of the Truro Subdivision Rules and Regulations which talks about respecting the natural environment gives this Board the authority to deny this application. If an alternate route is possible with less cut and fill then her clients are interested in having the discussion for a compromise. One significant omission in the application and also raised in a memo from Health agent is that the proposed access road crosses over septic system and would then need to comply with current code i.e. Title 5. The applicant should supply a plan for such construction. Attorney Cox supports having a meeting with the core parties to discuss an alternate route.

Attorney Zehnder stated he called Mr. Edmands to try and get all parties together for a compromise. The Board is not bound to approve this plan. This plan is trying to create and confer frontage. This lot doesn't have frontage and the cul-de-sac will not confer frontage. The Truro Conservation Trust is being penalized, but there are ways to come together. The parties can plan an easement and any necessary particulars and ask the Caters to apply for a frontage variance. Mr. Gaechter, president of the Truro Conservation Trust, stated the Trust owns approximately 350 acres in Truro and the primary function of the Trust is the stewardship of the land. The purchase of the lands by the Trust demands its conservation in perpetuity. There is an amendment to the deed stating it is in perpetuity. The Dykeman and the Cater parcels contain a grassy heath habitat which is unique to Cape Cod. Destroying this habitat is not an acceptable result of this development.

Mr. Kiernan stated he was sued by the Caters, and he represented himself. He also was a member of the Truro Planning Board for ten years and acknowledged that he sent emails to the Board Members and apologized for their inappropriateness. The plan submitted does not meet the minimum requirements of the Truro Rules and Regulations, therefore the plan cannot confer frontage. Mr. Kiernan then read through several sections of the Truro by-laws and rules and regulations. If the Board approves this plan it would be hard to defend it in court. Given the history of this plan and application, it is very likely this case will again appear in court. His letter is in the case file.

Ms. Snow asked all the parties to come together outside the Planning Board and consider an alternate location, knowing full well that the parties are only bound by the location set by the Land Court. Mrs. Greenhalgh asked the Board to allow the parties to meet, try to agree on an alternate location of the street and bring it before the board for the next meeting on April 15, 2014. The Board agreed to look at any plan even if the grade and width were outside the limits as set forth in the standards and rules and regulations. Mr. Boleyn moved to continue the Caters public hearing to April 15, 2014. Seconded by Mr. Childs voted on and approved 5-0-0.

Winkler Route Six Trust, Michael F. Winkler, Trustee, 1 Noons Heights Road, Site Plan Review Public Hearing

Representative: Attorney Ben Zehnder

The applicant seeks endorsement of an Application for Site Plan Review pursuant to §70.2 of the Truro Zoning By-law for 1) landscape material stockpiling and processing; 2) Asphalt/Brick/Concrete (ABC) stockpiling; and 3) ABC crushing no more than five times each calendar year for a week's duration each instance. The property is located at 1 Noons Height Road, Atlas Map 39 Parcel 166.

Mr. Zehnder asked to continue the hearing to April 15, 2014. Attorney Snow representing the Cape View Motel and the Burgess's asked the Board to recognize the need to further continue the application if he cannot be present at the April 15, Planning Board Meeting. The Board and Mr. Zehnder saw no issues with that request. Ms. Tobia moved to continue the public hearing to April 15, 2014. Seconded by Mr. Boleyn to April 15, voted on and approved 7-0-0.

Discussion on Proposed Changes to the Planning Board Policies and Procedures, including Code of Conduct

Ms. Snow asked Mr. Childs to open a discussion on a code of conduct for future of members of the Planning Board. Mr. Childs stated he has personal experience where people were rude and conducted themselves in a manner which is counter-productive to the Board. He finds nothing objectionable in the text and would consider putting this in the hand book. Mr. Worthington stated he does not feel this is necessary would like to edit this. Ms. Tobia stated that being new to the Board she wanted to know why Mr. Lucy called out to the public instead of coming to the Board (in regarding to a past zoning amendment proposal.) Mr. Worthington asked if these proposals for conduct would have caused Mr. Lucy to act in a different way. Mr. Lucy stated he felt he had no recourse and needed to make it known to the Board that these industries exist. Ms. Snow stated the document is good, delete redundancies and renumber items but essentially the document is fine. We should go through it. Mrs. Greenhalgh offered to compile the corrections for the Board members. Ms. Tobia agreed to send it out to each Board member.

Ms. Snow adjourned meeting at 8:16.

Respectfully Submitted

Steven Sollog