

**Truro Planning Board
Meeting Minutes- March 4, 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 Atty., Don Poole, Dave Clark, Jamie Veara Town Counsel, Lucy Clark, Nancy F. Callander, Fred Gaechter, Paul Keirnan, Linda Noons, Ben Zehnder, John Hopkins, Jennifer Morris, Steve DiGiovanni and Tom Roda

Ms. Snow called the meeting to order at 6:00pm

2014-001 - Willie J. Cater and Gloria J. Cater Definitive Subdivision – 9B Benson Road
Representatives Attorney Bruce Edmands; Surveyor Donald Poole; and Engineer Dave Clark

Continuation of the public hearing from February 4, 2014. The applicants seek approval of a Definitive Plan with the Clerk of the Town of Truro 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. Worthington and Mr. Pendleton recused themselves from this hearing.

Messrs. Worthington and Pendleton recused themselves. Mr. Edmands summarized the plan stating that in 1979 Dr. Cater and his wife purchased the lot as stated from Howard B. French with the hope of one day building a residence on the property. In the mid 1990's plans were drawn up and the abutters were notified that when the property was created in 1899 it was benefitted by a right-of-way at the time the property was deeded by Charles W. Cobb to Lorenzo Baker. The right-of-way is defined as "over my land on the East and the road now established", beyond that the location of the right-of-way was never fixed on the ground nor was there ever any structure built on the top of the hill. The Caters notified the abutters of the unfixed right-of-way and went about to fix a location of right-of-way. (As a matter of law, where a right-of-way is not specifically defined in a deed, the property owners, who have the benefit of the right-of-way along with the property owners whose land is burdened by the right-of-way, have the opportunity to reach an agreement where to locate it).

When an agreement was not found, the only recourse for the Caters was to turn to the Judicial System. On behalf of the Caters, Mr. Edmands filed an action in the Land Court seeking a declaratory judgment concerning, 1. The existence and vitality of the 1899 right-of-way, and; 2. Its location. That action precipitated 15 years of litigation over whether or not the right-of-way was validly granted in the first place, whether or not the right-of-way continued in existence or had been extinguished abandoned or otherwise relinquished in some fashion and ultimately where the right-of-way should be located. After two separate trials, first over the validity of

right-of-way and second over the location of the right-of-way, the land court declined to define the right-of-way absolutely using instead the rural road alternative found in the Truro regulations. This judgment fixed the decision of determining the road width and grade with the Planning Board allowing that the Planning Board has the legal authority to waive the 14' right-of-way requirement providing that all applicable rules and regulations are followed. This led to an appeal and more judgments. The Supreme Judicial Court took the case and demanded that the Land Court reconcile the conflict in the decision concerning the twelve foot width. This resulted in an amended judgment where the road is to be built no wider than what is decided to be necessary for the use. There is expert testimony in the record stating that twelve feet is adequate. If this adequately protects the esthetics and adequately protects the environment (the rural nature of the area) the Caters must now go before the Planning Board and make a request that they approve a right-of-way limited to the specifications set forth in the courts decision. In the past fifteen years every complaint has been addressed by the court, the applicants have reached out to every conflicting consideration and now ask the Planning Board to please recognize what the court has done in seeking to balance all these competing interests. The Cater's recognize there are environmental considerations still to be met but the Planning Board is asked to help the Caters to move forward.

Ms. Snow stated that the missing items from the application need to be provided. The Engineer showed the cul-de-sac on the plan and the gross area is noted. A notation regarding permanent bounds for the lot corners is missing. Mr. Lucy stated that pipes are as sufficient legally as concrete bounds. The Board agreed. Ms. Snow continued stating the Waivers are not listed on the definitive plan. The engineer stated that the missing items will be taken care of. Mrs. Greenhalgh stated that a covenant needs to be provided and the site needs to be staked. Ms. Snow read several letters in opposition to the definitive subdivision: John and Nancy Thornley; Steven Lafredo and Ellen Hirschbach; Eliza Cox; Lucy Clark; and Nancy F. Callander. Mr. Edmands stated that all these issues were addressed by the land court.

The Fire Commissioner entered the room and demanded a head count. Mrs. Greenhalgh asked parties present for the next part of the meeting to exit and wait outside the meeting room, which they did.

Mr. Edmands continued, asking if the board is disinclined to support a roadway that is less than the required width. Ms. Snow discussed with the Board the possibility of a longer less deleterious route. Mr. Edmands explained that the longer route was proposed and rejected the applicant would consider going back to that plan if there would be a way to do it quickly. Mr. Gaechter, President of Truro Conservation Trust ("TCT"), stated that the Board needs to define access and minimize the damage to the land's profile. The TCT requests either a denial of the application or provide a staked roadway with boundary and an indication of elevation and continue the application so that all the abutters can negotiate a more reasonable approach. The Board should consider a condition prohibiting the construction of the road until there is a building permit issued for a dwelling. Mr. Lucy reviewed the time frame of this legal dispute and asked why everyone has waited so long. Mr. Gaechter stated that in the Court the impact to the land was not considered, negotiating a least invasive route in two more months is not overbearing in a sixteen year struggle. Mrs. Greenhalgh stated that May 30, 2014 is the deadline for a decision; there are reasons to continue the hearing, but she suggested that the Board should

make a decision before the personnel of the Board changes as a result of the May election. Ms. Tobia stated if the Board follows the recommendations of the Land Court the grade will be steep and the road will not be wide enough, possibly a public hearing is needed to come up with a more acceptable width and a re-vegetation plan. Mr. Boleyn recommended that the Board take a little more time and supported that a building permit must be issued before the roadway is constructed. Mr. Lucy raised the issue of what to call this right-of-way, a driveway which the Board does not determine width and grade or a street which the Board does rule over width and grade. Mr. Edmands stated the request before the board is to address the issue of frontage, the cul-de-sac is the frontage. Mr. Veara stated that the Board is determining a roadway which will confer frontage to allow the Caters to build a home. The terminology of the 2007 and 2010 judgments interchanged the words (driveway and street), the judge determined that the adequate width for this roadway is 12' and that the Board can waive the regulations to allow a 12' road width. Ms. Tobia stated that if there were other plans that the abutters found less offensive those plans should be in this packet so a choice for can be made by the applicant and abutters. Mr. Edmands stated that there were a number of plans submitted by all the parties, none of which could be agreed on by all the parties. The plan before the Board tonight is the 2003 plan. The court chose the 2003 plan exhibit 37 by Coastal Engineering. A less deleterious plan has been drawn.

Ms. Snow stated that her concern is the cut and fill and asked the applicant to stake the center line and edge of limit of work so that the board can visit the site and determine the lay of the road plan. The Board will schedule a visit on Thursday March 13 at 3pm. Ms. Snow and board agreed to this site visit. Ms. Snow then asked the applicants to provide an alternate route for the road, recognizing the need for cooperation of the Truro Conservation Trust and the abutters.

Mr. Gaechter, acting as coordinator for the TCT agreed to get the Board of the TCT to decide on a best approach. Ms. Snow stated that without an adequate alternate proposal the Board can only make a decision on what is presented before the Board. Ms. Snow asked for traditional staking and a representative present to explain the grading. The representatives agreed.

Ms. Snow opened the hearing to the public. Mr. Keirnan, an abutter stated that the plan was given to Dr. Cater by the land court, there was no road, there was no frontage therefore the road must be 150' feet long before it will convey frontage. He asks the Board to make sure they provide a safe plan or not approve it at all. Mrs. Holt, an abutter asked that no work on the road begin until there is a building permit. There will need to be an environmental review, the Massachusetts Historical Commission has an archeological site at the base of the hill and that will trigger an archeological review and she reiterated the 50' of road will not confer frontage because there was no road prior to February 16, 1960. Lucy Clark an abutter read the deed from Charles Cobb to Lorenzo Baker which included a description of the right-of-way. She added that the purchaser knew that the property was land locked and was fully aware there would be problems gaining access to the property. The owner bears some responsibility and the offered design as shown is mean spirited.

Ms. Snow reminded the Board of the site visit and asked for a motion of continuance. Mr. Childs moved to continue the application to April 1st. Seconded by Mr. Lucy, voted on and continued to April 1, 2014. 5-0-2 (John Pendleton and Bill Worthington)

Zoning Amendment Public Hearing

Ms. Snow opened the public hearing at 7:45 pm by reading the legal notice into the record.

Article ____: To see if the Town will vote to amend the Truro Zoning Bylaw, Section 10.4 by adding new definitions for the following terms in alphabetical order: “Heavy Industry”; “Light Industry”; “Retail Business Service”; “Retail Sales”; and, “Wholesale Trade”.

And further by amending 30.2 – Use Table, by making the following changes:

- 1) under the Principal Use “Commercial” category: delete “Barber Shop” from the Use Table; change “Retail or wholesale business service” to “Retail business service” and change the “N” to “P” in the NT6A and TC districts; delete “(3)” after “Retail Sales”; add “Wholesale Trade” and make it “N” in the R, BP and S districts, “SP” in the NT6A and TC districts and “P” in the NTC and Rt6 districts; and,
- 2) under the Principal Use “Industrial” category change “Industrial or manufacturing use (5)” to “Light Industry (5)” and change the “N” to “SP” in the NT6A and TC districts; and add “Heavy Industry” and make it “N” in all districts; and,
- 3) delete Note 3 and leave it as “Reserved” and within Note 7, delete “, barbers shops, nursery schools”.

Ms. Snow reviewed the history of this article stating that none of these terms were defined, yet they appear in the use table; the Board proposes to make changes by defining the uses and expanding the uses in the use table. Ms. Snow read a letter in favor of the changes from the Truro non-resident taxpayer association. Ms. Snow opened the meeting up to the public.

Ms. Noons spoke against the proposed article and stated that the confusion has caused her great concern. The Noons Business has existed since before zoning and an explanation is needed for any changes to be made. Ms. Snow explained that there is a complete text of the proposed changes and added the proposals are going to expand the uses as they now exist. Heavy industry would be defined and would not be permitted in any district it is only permitted now in two districts by special permit.

Mrs. Greenhalgh explained that those uses that are lawfully pre-existing, non-conforming, may continue as grandfathered uses. Ms. Snow read the grandfather provision in the by-law §30.7 a. Mrs. Greenhalgh stated if the use is consistent with the current use on the property then that is OK. Any change of use requires a review from the Building Commissioner to determine consistency of use. Mr. Zehnder stated if there is a non-conforming use that is permitted now it can’t evolve with the times. Some of the changes are good but prohibiting heavy industry would only pose a burden on every industry present and prohibit future growth. He suggested identifying those uses that the town wants to eliminate, do not limit the uses without an outlet. The Board would be pushing these activities out of Town, without knowing what you may be losing. Mr. Hopkins, a property owner in the commercial district spoke against the proposed definitions.

Mrs. Greenhalgh read the existing regulations defining home business/occupation as an allowable use throughout the town. This definition has been in the zoning bylaw for many years.

She also indicated that any resident can make a motion on Town Meeting floor to make these articles less restrictive. In doing so, there would need to be demonstration as to why a use should be allowed. She further stated that these (the Light Industry and Heavy Industry) are definitions that are in use in nearby communities. The restriction on heavy industry is meant for large operations like a concrete manufacturer. The determination of whether an industry is heavy is something that would be decided by the Zoning Board of Appeals.

Mrs. Morris of GFM Enterprises, who rents space in Truro, stated opposition to the proposed article. She asked why there was not a list of allowable uses within the definition. Mrs. Greenhalgh explained the listing of uses would only be more restrictive, the individual needs to demonstrate that what is being done is light industry. Mr. Zehnder stated his opposition to the proposed article adding Mrs. Greenhalgh is right that current law requires a special permit but this Board should make it possible to have these businesses in Truro. The critical needs of the people in his room need to be taken into account.

Ms. Snow rebutted that the board has expanded the uses. Mr. Zehnder stated that the Board should hear the concerns of these citizens and provide a way to allow some of these uses before there is a town meeting. Mr. Brown suggested placing SP (Special Permit) in the use table for heavy industry on Rt. 6. Mr. Woodrow spoke against the proposed article. Ms. Snow described light industry with examples. A discussion followed outside the strict order of the meeting.

Ms. Snow stated the interpretation that all industry will fall into heavy industry if they make some noise or dust is wrong. Mr. DiGiovanni stated his opposition to the proposed article adding a list is what is needed. Mr. Roda stated his opposition to the proposed article because the interpretation of heavy industry is making people nervous. Mr. Hopkins restated his opposition to these definitions. Ms. Noons restated how her business needs to be able to be adaptable to any needs which will keep them in business and there's no clarity in the proposed article. Mrs. Greenhalgh recommended the Board move forward with the proposed articles, but to remove the proposed changes relative to "industrial." Mr. Pendleton moved to amend the articles. Seconded by Mr. Worthington voted on and approved 7-0-0. Mr. Pendleton moved to recommend the amended article to Town Meeting. Seconded by Mr. Childs voted on and approved 7-0-0. Ms. Snow closed the Public Hearing.

Review and development of "Comments" for Zoning Articles

Ms. Snow discussed the need for the comments for the changes to the use table and Site plan review. Mrs. Greenhalgh stated the deadline for the comments is March 11.

Review and Approval of Meeting Minutes:

Mr. Worthington moved to approve the minutes for January 27, 2014 as amended. Seconded by Mr. Childs voted on and approved 6-0-1 (Lisa Tobia)

Mr. Childs moved to approve the minutes of February 4, 2014 as amended. Seconded by Mr. Boleyn voted and approved 5-0-2. (Lisa Tobia and Chris Lucy)

Mr. Pendleton moved to approve the minutes for February 18, 2014 as amended. Seconded by Mr. Boleyn, voted on and approved 5-0-2 (Lisa Tobia and Chris Lucy)

Ms. Snow stated that the email was an inappropriate mode to achieve the confrontation before the sitting Board. A Board member owes it to the Board to share their concerns with the Board first. If you have a concern then let the Board address those concerns before any other action. It is disrespectful of the time the Board members spend working for the Town of Truro. Mr. Lucy responded that he was not disrespectful and the Board should kiss his ass. Mr. Lucy dismissed himself from the meeting. Ms. Snow continued that different opinions are important on a Board but it was unethical, self-serving and underhanded to blindside the Board with the distribution of the email, and found it very distasteful. Mr. Pendleton expressed his dismay with the action against the team (Board).

Adjourned 9:04pm

Respectfully Submitted

Steven Sollog