

**TRURO PLANNING BOARD AGENDA**  
**WEDNESDAY, December 6, 2016 – 6:00 p.m.**  
**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. Speakers are limited to no more than 5 minutes.

**Partial Release of Covenant**

**2012-001PB William and Patricia Berger** seek a partial release of Form D Covenant for Lot 23, 1 Capt. Williams Way, (L.C.P. No. 17658-H) and execution of Form F, Certificate of Completion & Release of Municipal Interest in Subdivision Performance Security.

**Definitive Plan – Public Hearing Continuance- Request for Further Continuance**

**2016-010PB Stephen Walsh, et al**, have filed an application for approval of a Definitive Plan with the Clerk of the Town of Truro pursuant to MGL c.40A, §81T and §2.5 of the Town of Truro Rules and Regulations Governing the Subdivision of Land with respect to their property located on Walsh Way, Walsh Way Extension and Valentine Lane, Map43, Parcels 7, 8, 9, 10, 134 & 135. The plan would widen existing roadways with no new lots created. Continued from September 6<sup>th</sup>, September 20<sup>th</sup>, and November 2<sup>nd</sup>, 2016. Applicant is requesting further continuance to February 7, 2017 due to scheduling with Zoning Board of Appeals.

**Commercial Site Plan Review – Public Hearing Continuance**

**2016-001SPR Winkler Route 6 Trust, Michael F. Winkler, Trustee**, seeks approval of an application for Commercial Site Plan Review pursuant to §70.3 of the Truro Zoning Bylaw for the current condition and use of the property as a commercial staging area for a crane company, for storage of equipment and supplies, and for commercial use. The property is located at 1 Noons Heights Road, Atlas Map 39 Parcel 166. Continued from May 3<sup>rd</sup>, July 19<sup>th</sup>, September 6<sup>th</sup>, October 4<sup>th</sup>, and October 18<sup>th</sup> 2016.

**Discussion on Possible Zoning Articles**

§40.2 Affordable Accessory Dwelling Units

§30.3 Seashore District

§30.4 Water Resource Protection District

**Review and Approval of Meeting Minutes**

November 16, Joint Meeting with Board of Health  
November 16, 2016 Planning Board Meeting

**Reports from Board Members and Staff**

**Meeting Dates and Other Important Dates**

December 21, 2016 (Wed.) – Regular Meeting  
January 3, 2017 (Tues.) – Regular Meeting  
January 17, 2017 (Tues.) – Regular Meeting

**Adjourn**



# TOWN OF TRURO

P.O. Box 2030, Truro, MA 02666

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

Fax: (508) 349-5505

criddle@truro-ma.gov

## **Memorandum**

To: Planning Board  
Fr: Carole Ridley  
Date: December 1, 2016  
Re: Release of Covenant

**2012-001PB William and Patricia Berger** seek a partial release of Form D Covenant for Lot 23, 1 Capt. Williams Way, (L.C.P. No. 17658-H) and execution of Form F, Certificate of Completion & Release of Municipal Interest in Subdivision Performance Security.

## **Background**

The subject property is part of a subdivision approved in 2006. Capt. William's Way is called Rose-Lee Way on the approved plans. Subsequently, in 2011 and 2012, ANRs were filed to adjust lot lines.

The road design was approved under standards in effect in 2006. When the Planning Board considered the ANR in 2011, they also granted a waiver for the grade requirement not to exceed 10% between stations 0+95 and 1+65 and between stations 3+40 and 3+60. The minutes of this meeting are enclosed.

Otherwise, the as built plan shows a traveled way that is 22 feet, which is wider than the approved road profile.

Truro DPW Director Jarrod Cabral agreed to inspect the road, in consideration of as built plans and the approved road profile. His report was not available at the time of this memo and should be available to the Board at the December 6<sup>th</sup> meeting.

The applicant has provided stamped as built plans and a letter signed by a Registered Land Surveyor and Registered Land Surveyor and Professional Engineer, per section 2.5.7 of the Rules and Regulations Governing the Subdivision of Land.

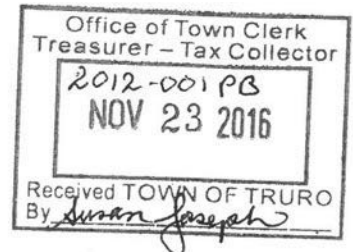
## **Planning Board Action**

If the Board so chooses to release the covenant associated with the Lot 23, a possible motion to this effect follows:

In consideration of performance of road construction consistent with the requirements of section 2.5.4 of the Rules and Regulations Governing the Subdivision of Land, vote 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 Land Court Registry, document 1,195,003, as it pertains only to Lot 23 (LCP 17658-H).

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

P.O. BOX 592  
WELLFLEET, MASSACHUSETTS 02667  
(508) 349-3110  
FAX (508) 349-7577  
e-mail: sladeassoc@capecod.net



**ASSOCIATES:**

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

November 17, 2016

Truro Planning Board  
P.O. Box 2030  
Truro, MA 02666

Re: Captain William's Way

Dear Board Members,

We have inspected the completed construction for the above-captioned road and state that we approve the methods of construction and materials used in the performance of this work and that there has been at least one year growth for the loamed and seeded side slopes. The vertical and horizontal conditions, as constructed, are shown on a plan entitled "Captain William's Way, As-built Plan & Profile, Made for William Berger" dated October 24, 2016, by Slade Associates, Inc., Registered Land Surveyors.

Sincerely,

Handwritten signature of Chester N. Lay in black ink.

Chester N. Lay  
Registered Land Surveyor

Sincerely,

Handwritten signature of Timothy J. Brady in black ink.

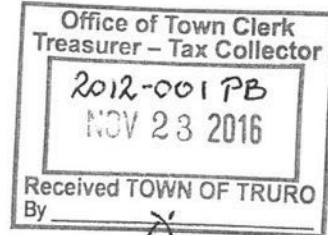
Timothy J. Brady  
Registered Land Surveyor  
Professional Engineer

Encls.

CNL/jd

Received of Slade Associates, Inc. regarding Captain Williams Way (Berger)

- 1 Letter from Chester N. Lay and Timothy J. Brady
- 5 Copies of "Captain Williams Way" As-Built Plan & Profile plan #2016-112



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Truro Town Clerk  
November 23, 2016



Law Offices of  
CHRISTOPHER R. MINER  
14 COVE ROAD  
POST OFFICE BOX 1570  
ORLEANS, MASSACHUSETTS 02653  
(508) 255-5563  
TELEFAX (508) 255-4220  
chris@cmlaw.net

RECEIVED  
SER 061 120102016

BY:.....

October 4, 2016

RECEIVED  
OCT 11 2016

BY:.....

Truro Planning Board  
P.O. Box 2030  
Truro, MA02666

Attn: Carole Ridley

Re: Partial release of Form D Covenant - Subdivision for William R. Berger and Patricia Berger, 1 Capt. William's Way (Lot 23, L.C.P. No. 17658-H)

Dear Carole:

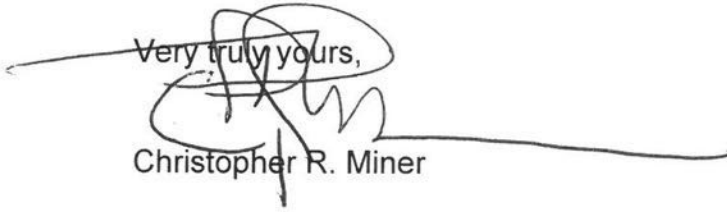
I, along with Chester N. Lay of Slade Associates, Inc., am assisting the owner/applicant in seeking a Partial Release.

Enclosed is Form F requesting a Partial Release of Lot 23 from the Form D Covenant, along with my check for the filing fee in the amount of \$100.00 and copies of the Covenant and the "G" and "H" plans for the Board's reference.

Please place this matter on the docket for Tuesday, October 18, 2016.

If you have any questions, please contact me.

Very truly yours,

  
Christopher R. Miner

CRMcrm  
Enclosures  
cc: Chester N. Lay  
William R. Berger



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

Date: October 4, 2017 Request for Partial Release of Lot 23 only.  
Subdivision Name: Plan of Land in Truro Location 1 Capt. Williams Way  
Owner: William R Berger and Patricia Berger  
Owner address: 14 Hadden Road Scarsdale, NY 10583  
Applicant: Same as Owner  
Applicant address: "

Barnstable County Registry of Deeds, Plan Book \_\_\_\_\_, Page \_\_\_\_\_

Barnstable County Land Registry, L.C.P. No. 17658-H

Form D Covenant Doc. No. 1195,003 Book \_\_\_\_\_ Page \_\_\_\_\_

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 have been fully and satisfactorily completed in accordance with the Planning Board Rules and Regulations to serve the following lots:

Pursuant to MGL c.41, §81-U and in consideration of said construction and installation, the Town of Truro a Massachusetts municipal corporation, acting through its Planning Board, hereby release its interest in the performance security for the subdivision cited above.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Truro Planning Board

Date: \_\_\_\_\_

Barnstable, ss.

COMMONWEALTH OF MASSACHUSETTS

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

The undersigned William R. Berger of  
14 Hadden Road, Scarsdale, New York 10583, hereafter called the  
"Covenantor", having submitted to the Truro Planning Board, a definitive plan of a  
subdivision, entitled "Plan of Land in Truro Being a Division of Lot 17 as Shown on L.C.P. No. 17658E"  
dated Aug. 1, 2006 made by Slade Associates, Inc. does hereby  
covenant and agree with said Planning Board and the successors of office of said Board, pursuant to  
G.L., C.41, Sec. 81U, as amended, that:

1. The Covenantor is the owner of record of the premises, shown on said plan;
2. This covenant shall run with the land and be binding upon the executors, administrators, heirs, assigns of the Covenantor, and their successors in title to the premises shown on said plan;
3. The construction of ways and the installation of municipal services shall be provided to serve any lot in accordance with the applicable Rules and Regulations of said Board before such lot may be built upon or conveyed, other than by mortgage deed; provided that a mortgagee who acquires title to the mortgaged premises by foreclosure or otherwise and any succeeding owner of the mortgaged premises or part thereof may sell any such lot, subject only to the portion of this covenant which provides that no such lot so sold shall be built upon until such ways and services have been provided to serve such lot;
4. Nothing herein shall be deemed to prohibit a conveyance subject to this covenant by a single deed of the entire parcel of land shown on the subdivision plan or of all lots not previously released by the Planning Board without first providing such ways and services;
5. This covenant shall take effect upon the approval of said plan;
6. Reference to this covenant shall be entered upon said plan and this covenant shall be recorded when said plan is recorded.

7. See attachment.  
The undersigned \_\_\_\_\_ wife, husband,  
of the Covenantor hereby agree that such interest as I, we, may have in said premises shall be subject to  
the provisions of this covenant and insofar as is necessary release all rights of tenancy by the courtesy,  
dower and other interest therein.

EXECUTED as a sealed instrument this 18 day of March 2011

William R. Berger  
\_\_\_\_\_  
\_\_\_\_\_

LAND COURT, BOSTON. The land  
herein described will be shown on  
our approved plan to follow as  
REFERRED TO  
JUN 21 2012  
Plan 17658G Lots 18, 19, 20  
(EXAMINED AS DESCRIPTION ONLY)  
T.C. PONTBRIAND  
ACTING CHIEF ENGINEER  
JAV

COMMONWEALTH OF MASSACHUSETTS

State of NY  
Barnstable, ss  
County of Westchester

On this 18<sup>th</sup> day of March, 20 11, before me, the undersigned notary public,  
personally appeared William Berger, proved to me through satisfactory evidence of  
identification, which were NYS DL# 928 985-399  
to be the person whose name is signed on the preceding or attached document in my presence.

My commission expires:

Nathan Ellenberger  
Notary Public, State of New York  
Qualified in Westchester County  
No. 01EL6161404  
Commission Expires 02/26/2015

[Signature]  
Notary Public

CTF 154271

7. Attachment to Berger Covenant

We, the undersigned, being a majority of the Truro Planning Board present at a meeting held April 12, 2011, hereby agree to waive certain of our requirements as detailed in Table 1, *Design Elements* of our regulations and allow a maximum center line grade within Rose-Lee Way to be 10% between stations 0+95 and 1+65 and between stations 3+40 and 3+60.

[Signature]  
[Signature]  
[Signature]

[Signature]  
[Signature]  
[Signature]

Truro Planning Board

APRIL 12, 2011

Date

COMMONWEALTH OF MASSACHUSETTS

Barnstable, ss.

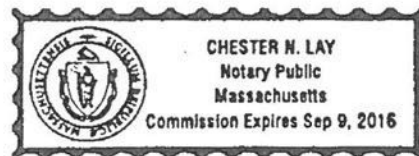
12 April 2011

Then personally appeared Nicholas Brown, one of the above-signed members of the Truro Planning Board, and acknowledged the fore-going instrument to be his free act and deed before me.

My commission expires:

September 9, 2016

[Signature]  
Notary Public



BARNSTABLE REGISTRY OF DEEDS



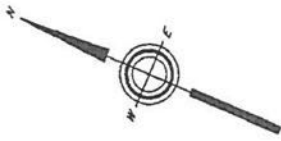
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SUBDIVISION PLAN OF LAND IN TRURO

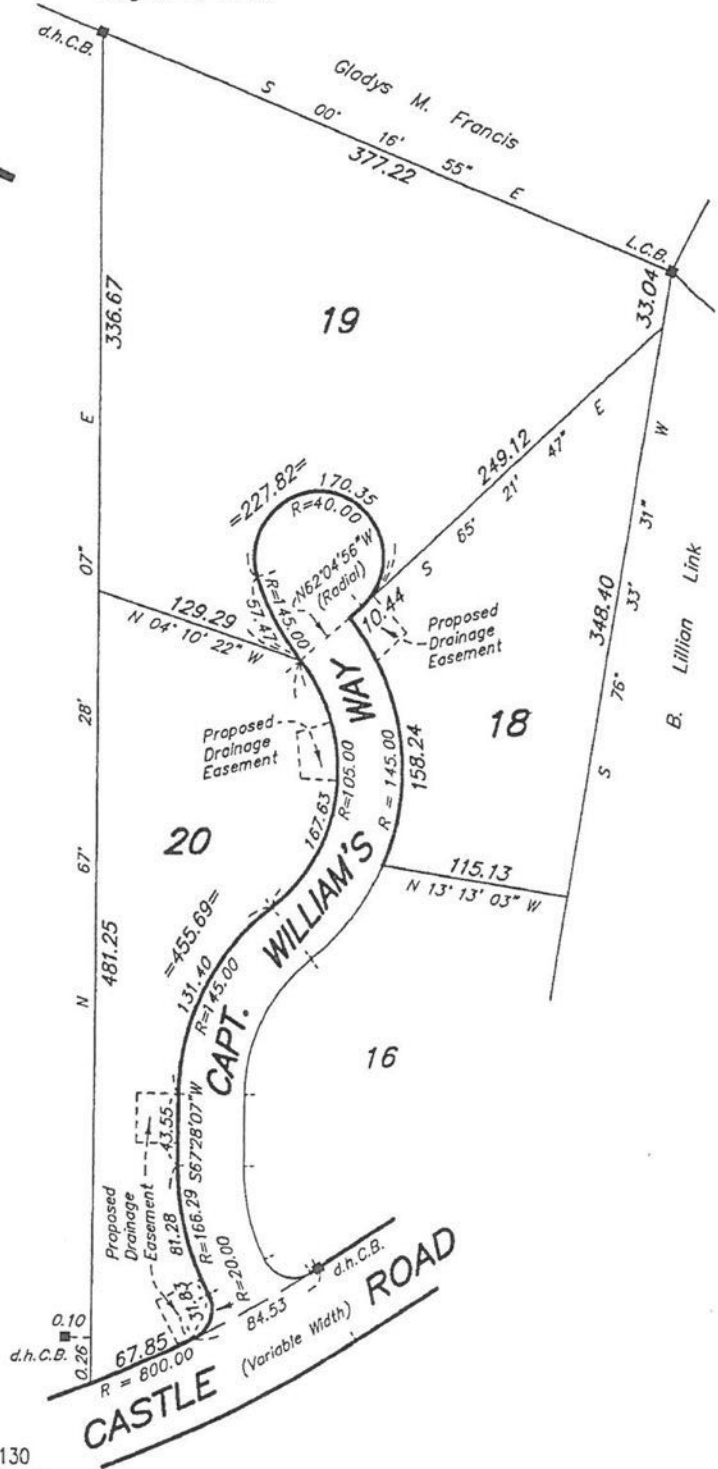
Slade Associates, Inc., Surveyors

August 1, 2006

17658 G



Plan No. 17658 C Cert. No. 44932



Subdivision of Lot 17  
 Shown on Plan 17658-F  
 Filed with Cert. of Title No. 92130  
 Registry District of Barnstable County

Separate certificates of title may be issued for land  
 shown hereon as Lots 18, 19 and 20  
 By the Court.

see "H" Plan  
 Deborah J. Patterson...  
 Recorder

June 21, 2012

ST-07NZ

Abutters are shown as  
 on original decree plan.

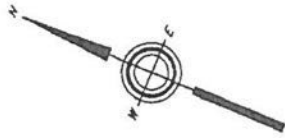
Copy of part of plan  
 filed in  
**LAND REGISTRATION OFFICE**  
 June 21, 2012  
 Scale of this plan 80 feet to an inch  
 G.T. Capelianis, Engineer for Court

SUBDIVISION PLAN OF LAND IN TRURO

Slade Associates, Inc., Surveyors

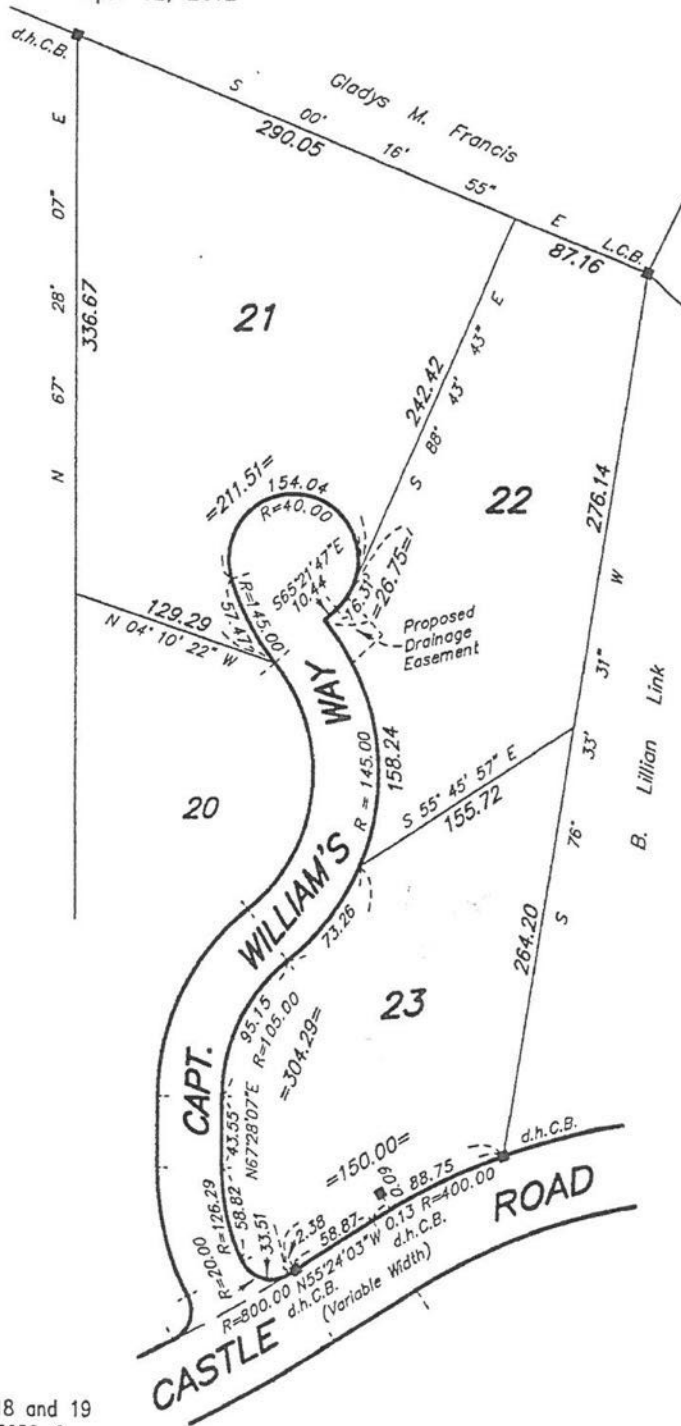
April 12, 2012

17658H



Plan No. 17658 C Cert. No. 44932

4



Subdivision of Lot 16 and Lots 18 and 19  
Shown on Plans 17658-F and 17658-G  
Filed with Cert. of Title Nos. 92130 and  
Registry District of Barnstable County

Separate certificates of title may be issued for land  
shown hereon as Lots 21, 22 and 23  
By the Court.

*Deborah J. Patterson*  
Recorder

June 22, 2012

ST-0A0G

Abutters are shown as  
on original decree plan.

Copy of part of plan  
filed in  
**LAND REGISTRATION OFFICE**  
June 22, 2012  
Scale of this plan 80 feet to an inch  
T.C. Pontbriand, Acting Engineer for Court

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

P.O. BOX 592  
WELLFLEET, MASSACHUSETTS 02667  
(508) 349-3110  
FAX (508) 349-7577  
e-mail: sladeassoc@capecod.net

RECEIVED  
OCT 04 2016  
BY: \_\_\_\_\_

**ASSOCIATES:**

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

September 29, 2016

Truro Planning Board  
P.O. Box 2030  
Truro, MA 02666

Re: Subdivision For William Berger, Capt. William's Way (Lot 23, L.C.P. No. 17658H)

Dear Board Members,

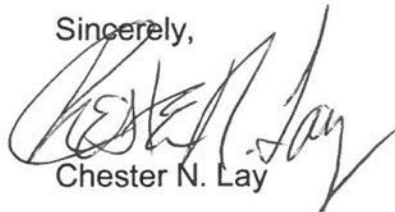
The owners of the above-captioned property are requesting a partial release from Covenant for this lot only (see Section 25.6 of the Truro Planning Board Regulations). This lot has the requisite frontage (150.00 feet) on Castle Road but its drive enters from the new subdivision road, Capt. William's Way.

I have examined the new road and state the following:

- The road is in and paved and provides for traffic circulation;
- The side slopes are loamed and seeded and utilities installed;
- The only outstanding work to be completed prior to submission of an "as-built" plan is the setting of the bounds.

Release of Lot 23 from the Covenant would leave the remaining three lots in this subdivision still under the Covenant, more than sufficient collateral to cover the installation of concrete monuments and the preparation of the "as-built" plan.

Sincerely,

  
Chester N. Lay

Encl.

Cc: Carole Ridley  
Christopher R. Miner, Esq.  
William Berger

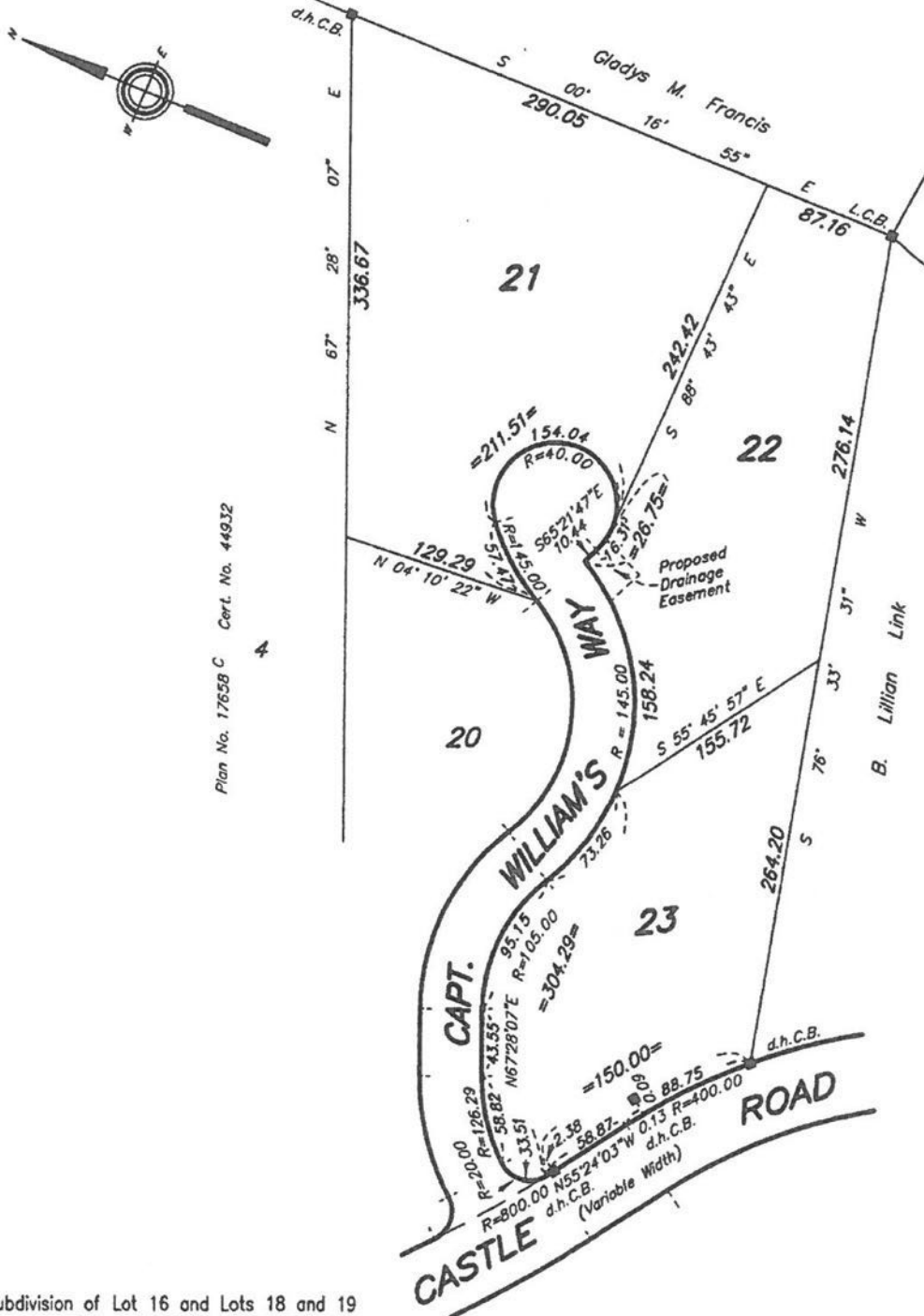
CNL/jd

SUBDIVISION PLAN OF LAND IN TRURO

Slade Associates, Inc., Surveyors

April 12, 2012

17658 H



Subdivision of Lot 16 and Lots 18 and 19  
 Shown on Plans 17658-F and 17658-G  
 Filed with Cert. of Title Nos. 92130 and  
 Registry District of Barnstable County

Separate certificates of title may be issued for land  
 shown hereon as Lots 21, 22 and 23  
 By the Court.

*Deborah J. Patterson*  
 Recorder

June 22, 2012

ST-OAOG

Abutters are shown as  
 on original decree plan.

Copy of part of plan  
 filed in  
**LAND REGISTRATION OFFICE**  
 June 22, 2012  
 Scale of this plan 80 feet to an inch  
 T.C. Pantbriand, Acting Engineer for Court



The undersigned William R. Berger of  
14 Hadden Road, Scarsdale, New York 10583, hereafter called the  
"Covenantor", having submitted to the Truro Planning Board, a definitive plan of a  
subdivision, entitled "Plan of Land in Truro Being a Division of Lot 17 as Shown on L.C.P. No. 17658E"  
dated Aug. 1, 2006 made by Slade Associates, Inc. does hereby  
covenant and agree with said Planning Board and the successors of office of said Board, pursuant to  
G.L., C.41, Sec. 81U, as amended, that:

1. The Covenantor is the owner of record of the premises, shown on said plan;
2. This covenant shall run with the land and be binding upon the executors, administrators, heirs, assigns of the Covenantor, and their successors in title to the premises shown on said plan;
3. The construction of ways and the installation of municipal services shall be provided to serve any lot in accordance with the applicable Rules and Regulations of said Board before such lot may be built upon or conveyed, other than by mortgage deed; provided that a mortgagee who acquires title to the mortgaged premises by foreclosure or otherwise and any succeeding owner of the mortgaged premises or part thereof may sell any such lot, subject only to the portion of this covenant which provides that no such lot so sold shall be built upon until such ways and services have been provided to serve such lot;
4. Nothing herein shall be deemed to prohibit a conveyance subject to this covenant by a single deed of the entire parcel of land shown on the subdivision plan or of all lots not previously released by the Planning Board without first providing such ways and services;
5. This covenant shall take effect upon the approval of said plan;
6. Reference to this covenant shall be entered upon said plan and this covenant shall be recorded when said plan is recorded.

7. See attachment.

The undersigned \_\_\_\_\_ wife, husband,  
of the Covenantor hereby agree that such interest as I, we, may have in said premises shall be subject to  
the provisions of this covenant and insofar as is necessary release all rights of tenancy by the courtesy,  
dower and other interest therein.

EXECUTED as a sealed instrument this 18 day of MARCH 2011

William R. Berger  
\_\_\_\_\_  
\_\_\_\_\_

LAND COURT, BOSTON. The land  
herein described will be shown on  
our approved plan to follow as

REFER TO

JUN 21 2012

Plan 17658G Lots 18, 19, 20

(EXAMINED AS DESCRIPTION ONLY)

T.C. PONTBRIAND  
ACTING CHIEF ENGINEER

JAV

COMMONWEALTH OF MASSACHUSETTS

State of Ny  
Barnstable, ss,  
County of Westchester

On this 18<sup>th</sup> day of March, 20 11, before me, the undersigned notary public,  
personally appeared William Berger, proved to me through satisfactory evidence of  
identification, which were NYSID# 923 985 399  
to be the person whose name is signed on the preceding or attached document in my presence.

My commission expires:

Nathan Ellenberger  
Notary Public, State of New York  
Qualified in Westchester County  
No. 01EL6161404  
Commission Expires 02/26/2015

[Signature]  
Notary Public

CTF 194271

**Truro Planning Board  
Minutes of meeting, 12 April 2011  
Truro Town Hall**

Members present: Nick Brown, Leo Childs, Greg Morris, Karen Snow, Robert Weinstein (chair); William Worthington

Member absent: Tony Zehnder

Others present: Alan Efromson; Charleen Greenhalgh, Assistant Town Administrator/Planner; Regan McCarthy, President, Truro Non-resident Taxpayers' Association; Chet Tangerini; Glen Passamen; Buddy Perkel; John Pendleton; members of the Board of Selectmen; approximately five other persons

Mr. Weinstein called the meeting to order at 6:03 p.m. The first part of the meeting, held in the Selectmen's Meeting Room, was a public hearing on three petitioned zoning amendments in the Warrant articles for Town Meeting.

**Public Hearing on Petitioned Zoning Amendments**

Mr. Weinstein explained the ground rules and then read the first petitioned article:

Article \_\_\_\_: To see if the Town will vote to amend the Truro Zoning Bylaw, Section 40.3 (Conversion of Cottage Colony, Motor Court, Motel or Hotel) Subsection C (covenant) by deleting "March 31" and replacing it with "February 28". (This petitioned amendment was re-advertised due to a posting error; the hearing was originally scheduled for 22 March 2011.)

Mr. Tangerini, the petitioner, explained that the purpose of the article is to allow condominium owners more usable time of their property. Mrs. Greenhalgh explained that if the article passes it will not automatically apply to all condominiums; whether it applies depends on several things, including how the condo association covenant is written. Each condo association would have to vote to change, it may require a return to the Board of Appeals and to the Board of Selectmen.

Mr. Weinstein asked for questions and comments from the Planning Board; there were none. He then asked for questions from the audience. Selectman Curtis Hartman spoke in favor of the article and stated there is no downside for the Town in passing it. Regan McCarthy also spoke in favor of the article, as did Glenn Gossamen who stated that he has been a property owner in Truro for 40 years, a full-time resident for five years, and recently downsized to a condo.

Mr. Weinstein moved that the Planning Board recommend the article to Town Meeting; second by Mr. Brown. The motion passed on a vote of 6-0-0.

Mrs. Greenhalgh noted that as a non-resident, Mr. Tangerini is not eligible to make a motion on the floor at Town Meeting; Mr. Brown volunteered to do so.

Mr. Weinstein then invited Alan Efromson to come to the table. Mr. Efromson stated that he was present as a citizen of Truro and not in any official capacity. He then read the text of the article:

Article \_\_\_\_: To see if the Town will vote to amend the Truro Zoning Bylaw Section 50, Area and Height Regulations by adding a new Section 50.3 – Maximum Bulk, with a table.

Mr. Weinstein read a letter on the matter dated April 30, 2011 from George Price, Superintendent of the Cape Cod National Seashore, to Mrs. Greenhalgh and an e-mail message from architect Francis Sullivan to Mr. Worthington dated April 3, 2011. Mr. Brown noted that Mr. Sullivan is an AIA (American Institute of Architects)-registered architect who practices in Truro and Vermont, and he (Mr. Brown) attaches particular credence to what Mr. Sullivan has to say.

Mr. Weinstein began the discussion by stating that the term “habitable space” is problematic, and before the Town accepts the proposed amendment, there needs to be a definition of the term in the Zoning Bylaw. He noted that accessory buildings are exempt from the proposed regulation, and this is a concern as it would allow a property owner to build an airline hangar or a 10-car garage adjacent to the primary dwelling. He stated that while the proposed article mirrors last year’s Planning Board proposal, that proposal did not get fully discussed at Town Meeting, adding that the language of that proposal was worked on very carefully over many months, and that careful language is missing from this petitioned article.

Mr. Efromson responded. His method in the petitioned article is to use the same methodology as the Assessor’s Office; the proposed Bylaw amendment affects only new construction going forward; a definition of “habitable space” is not needed as it is defined in the Building Code; the numbers in the petitioned article are larger than those in last year’s Planning Board proposal. He then provided statistics on current homes in each category of the table and how many would be too large if the proposed bylaw were in effect.

Mr. Weinstein addressed the use of definitions used by the Assessor’s Office, stating that Town Counsel advised last year against using these definitions, citing as an example that net area on the Assessor’s card doesn’t correspond to either the Building Code or zoning. Mr. Efromson responded that this number would not be generated by the Assessor’s Office but by the Building Department and the applicant. Mr. Weinstein said that the Comment should be removed from the article as it is extremely misleading. Buddy Perkel disagreed with Mr. Weinstein's interpretation with the Comment. Mr. Efromson stated that the Comment is correct, and when he presents the article at Town Meeting he will state that the method is the same as used by the Assessor’s Office, and this is being done to counteract the problem last year.

Mr. Brown stated that he applauds the petitioned article for attempting to use a sliding scale but feels there are flaws in it, e.g. the definitions, and he cannot support it in its current form. Ms. Snow expressed agreement with Mr. Efromson, stating she doesn’t see a conflict in the definitions of area and habitable space. She added that she does have a bit of a problem with the commentary for the article; it is a clarity issue. She said the table is great - it has good numbers and is workable; her only issue is with the last sentence of Section A on knee wall/eave space. Mr. Efromson said that his intention in using knee wall is to give a break to people with sloping ceilings.

John Pendleton spoke, stating that he worked with the Planning Board for a year to develop last year’s Planning Board proposals and remembers George Price’s comments last year regarding the 4,400 sq. ft. maximum, and he says the same thing this year. He would hate to see this petitioned article fail, following on the Planning Board’s work last year, because of language problems. This is a streamlined version of what the Planning Board proposed last year which never got a fair hearing, and he hopes the Planning Board will help with the passing this article.

Mr. Worthington expressed support for the petitioned article but sees its defects, especially regarding knee walls; the article should specify height, but he does not know whether the article can be amended on the floor of Town Meeting. He addressed a question to Mrs. Greenhalgh asking if the Planning Board article and the petitioned article both passed, would they be in conflict? Mrs. Greenhalgh replied in the negative; the two articles can work together.

Mr. Worthington made a motion that the Planning Board recommend the petitioned article to Town Meeting; second by Ms. Snow. The vote on the motion was 3 in favor (Morris, Snow, Worthington) and 3 against (Brown, Childs, Weinstein). The motion failed; however the report to the Town Meeting will stipulate the split vote.

Mr. Efromson read the second petitioned article:



Article \_\_\_\_: To see if the Town will vote to amend the Truro Zoning Bylaw Section 50, Area and Height Regulations by adding a new Section 50.3 – Maximum Bulk, without a table.

He explained that the only difference between the two petitioned articles is that instead of the four-tiered approach used in the first article, the second article has a single maximum of 5,000 sq. ft. He stated that if the first article passes, the second will be indefinitely postponed.

Ms. Snow made a motion that the Planning Board recommend the petitioned article to Town Meeting; second by Mr. Worthington. The vote on the motion was 3 in favor (Morris, Snow, Worthington) and 3 against (Brown, Childs, Weinstein). The motion failed; however the report to the Town Meeting will stipulate the split vote.

Mr. Weinstein closed the public hearing shortly before 7:00 p.m. and announced that the Planning Board would continue its meeting downstairs in the Historic Meeting Room. The meeting reconvened at 7:00 p.m.

Others present: Kevin Bazarian; John Dematteis; Chet Lay, Slade Associates. Mrs. Greenhalgh was not present for this part of the meeting.

**2011-003 John R. Canavari Revocable Trust – Site Plan Review – 20 Prince Valley Road**

Mr. Weinstein reopened the public hearing on this matter, being a continuation from March 22, 2011. As no representative was present, the Board moved on to other matters.

**2006-014 Charlotte Hatfield – Endorsement of Definitive Plan and Covenant and Review of Homeowners' Association Document – Rose-Lee Way, off Castle Road**

Representative: Chet Lay, Slade Associates

Mr. Weinstein distributed copies of and read a letter from Chet Lay to the Planning Board dated April 11, 2011 and explained that the applicant is requesting a waiver of the maximum center grade line of 10%. He shared comments from Mrs. Greenhalgh who had told him that all Board members present can vote on the matter even though they were not members of the Planning Board when its earlier decision was made.

Mr. Lay reviewed the background on the matter, explaining that the applicant is seeking endorsement of a new plan; the previous plan was approved but not endorsed, pending MESA approval. Mr. Brown asked who among Planning Board members has been on the property, stating that he knows it very well and has no issues with what is proposed. Ms. Snow said the Planning Board would be remiss in taking the word of someone with a vested interest (Mr. Lay) and asked if the minutes of the meeting at which the plan was approved were available. Mr. Lay asked Ms. Snow if she just needed more information. Mr. Childs commented that it would be a major expense and effort to redesign. Mr. Weinstein stated that he has no problem with the application as the Board is being asked to endorse a plan that it has already approved and what is proposed is well within the intent of the 8% requirement.

Mr. Brown commented that there are differing relationships between MESA and various applicants (some friendly and others unfriendly). Mr. Weinstein found the minutes of the 24 October 2006 meeting at which the plan was approved and offered them to Ms. Snow who read them and commented that they didn't say much.

Ms. Snow made a motion that the Planning Board allow a waiver from the grade requirement, not exceeding 10% for Rose-Lee Way between stations 0+95 and 1+65 and between stations 3+40 and 3+60, to endorse the Definitive Plan and the Covenant and to approve the Homeowners Agreement; second by Mr. Worthington. The motion passed on a vote of 6-0-0. J

**2011-005 Charlotte Hatfield – Approval Not Required – Lots 18 & 19, Rose-Lee Way**

Representative: Chet Lay, Slade Associates



Mr. Weinstein read the matter into the record. Mr. Lay showed the proposed change on the plan, i.e. moving the lot line to create a four-acre lot.

Ms. Snow moved that the Planning Board endorse the Plan of Land in Truro being a Subdivision of Lots 18 & 19 as shown on L.C.P. No. 17658G, dated March 23, 2011, at 1 in. = 50 ft., by Slade Associates, Inc., (Plan #2011-47), as Approval Not Required, and to file said decision with the Town Clerk; second by Mr. Brown. The motion passed on a vote of 6-0-0. ↓

#### **John Dematteis – Waiver of Site Plan Review**

Representative: Kevin Bazarian

Mr. Weinstein read the matter into the record. Mr. Brown stepped down with a conflict, stating that he was the realtor for the transaction, and left the room. Mr. Bazarian explained the proposal: to construct an 1,850 sq. ft. three-bedroom single-family dwelling with a 2,500 sq. ft. two-car garage at 4 Yellow Brick Road. He stated that the plan includes landscaping, and no trees outside the MESA area are being taken down; a cut sheet on lighting is also included – there will be no post lights or lights on the street. Mr. Weinstein distributed copies of a memo from Health Agent Pat Pajaron dated April 7, 2011

Mr. Weinstein moved that the Planning Board approve the request of John Dematteis, c/o Kevin Bazarian, for a Waiver of Site Plan Review pursuant to Section 70.2 of the Truro Zoning Bylaw for the property located at 4 Yellow Brick Road, for a single-family dwelling. This is based on the fact that the proposal does not substantially change the relationship of the structure to the site or to abutting properties and/or structures. Mr. Worthington seconded the motion. The motion passed on a vote of 5-0-0.

#### **2011-003 John R. Canavari Revocable Trust – Site Plan Review**

Mr. Brown rejoined the table. As there was still no representative present, Mr. Weinstein moved to continue the matter to 3 May; second by Mr. Brown. The motion passed on a vote of 6-0-0.

#### **Minutes**

Minutes of the meeting on 22 March were reviewed and corrections made. Mr. Weinstein moved that the minutes be accepted as corrected; second by Mr. Brown. The motion passed on a vote of 6-0-0.

#### **Other Matters**

Mr. Weinstein distributes copies of two documents from Mrs. Greenhalgh: a list of building permits issued by the Building Department in March 2011 and a letter to the Board from Chet Lay dated April 11, 2011 regarding the Horton estates.

#### **Review of Motions for Town Meeting**

Mr. Weinstein reviewed the draft provided by Mrs. Greenhalgh listing each motion to be made by the Planning Board at Town Meeting and briefly discussed each of the petitioned articles. He stated that he could support the petitioned articles regarding house size but articles cannot be amended on the floor of Town Meeting to be more restrictive. He said that he would be happy if the the articles on house size do not pass this year as he would like to work with the proponents of the petitioned articles to come up with a revised version. He added that the “Comment” on the petitioned articles will lead to confusion for attendees at Town Meeting.

Ms. Snow disagreed, stating that the Comment is pretty clear while having a few small problems including the language on the knee wall issue, which is a little vague. She stated that she would like to have heard from the Building Commissioner before the eleventh hour. Mr. Worthington remarked that the commentary on the petitioned article can be read in two ways, but it cannot be changed now; the proposed bylaw itself makes no mention of using the Assessor’s data. Mr. Weinstein stated that he is not opposed philosophically to the direction taken by those presenting the petitioned articles, but the language is flawed.

Mr. Brown stated that he does not need to have authorship of what Town Meeting passes – theirs, ours, or both. He noted that the terms “habitable” and “non-habitable” are used, but “habitable” is not defined. If Building Commissioner Tom Wingard has no problem with the petitioned article and can enforce it, he (Mr. Brown) can support it; if the Building Commissioner does have a problem with it, he (Mr. Brown) cannot support it.

Ms. Snow spoke further on her position. Mr. Weinstein said that if Mr. Wingard is comfortable with the petitioned article, he (Mr. Weinstein) can live with it. He added that Wellfleet has lived for years with 15% coverage and is not overrun with McMansions. He added that economics are a limiting factor, and asked rhetorically how many people can afford to build a 10,000 sq. ft. house. Mr. Worthington asked that Mr. Weinstein and a Board member who voted in favor of the petitioned articles meet with Tom Wingard to discuss the petitioned articles and obtain his viewpoint. Mr. Weinstein and Ms. Snow agreed to do so, and Mr. Worthington stated that he would get the documents to Mr. Wingard the next morning and let him know that Mr. Weinstein and Ms. Snow will want to talk with him about them.

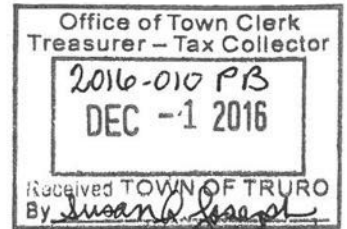
A motion was made and seconded to adjourn and passed unanimously. The meeting adjourned at 8:50 p.m.

Respectfully submitted,

Sharon A. Sullivan, Secretary

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

P.O. BOX 592  
WELLFLEET, MASSACHUSETTS 02667  
(508) 349-3110  
FAX (508) 349-7577  
e-mail: sladeassoc@capecod.net



**ASSOCIATES:**

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

December 1, 2016

Planning Board  
Town of Truro  
P. O. Box 2030  
Truro, MA 02666

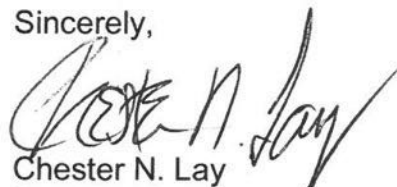
Re: Extension Request For Walsh Definitive Plan #2016-010PB

Dear Board Members,

By way of this letter, we are requesting (1) a continuance of the public hearing for the above-captioned plan until February 7, 2017 and (2) a continuance of the period of Board action (the filing of the decision) until February 28, 2017.

Thank you for your consideration in this matter.

Sincerely,



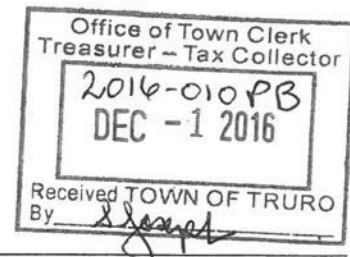
Chester N. Lay  
Registered Land Surveyor

Cc: Carole Ridley

CNL/jd

Received of Slade Associates, Inc. regarding request for extension (Walsh #2016-010PB)

- 1 Letter requesting continuance of public hearing



Truro Town Clerk  
December 1, 2016





# TOWN OF TRURO

P.O. Box 2030, Truro, MA 02666

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

Fax: (508) 349-5505

cridley@truro-ma.gov

## Memorandum

To: Planning Board

Fr: Carole Ridley

Date: December 1, 2016

Re: Commercial Site Plan Review for 2016-001SPR Winkler Route 6 Trust

**2016-001SPR Winkler Route 6 Trust, Michael F. Winkler, Trustee**, seeks approval of an application for Commercial Site Plan Review pursuant to §70.3 of the Truro Zoning Bylaw for the current condition and use of the property as a commercial staging area for a crane company, for storage of equipment and supplies, and for commercial use. The property is located at 1 Noons Heights Road, Atlas Map 39 Parcel 166. Continued from May 3<sup>rd</sup>, July 19<sup>th</sup>, September 6<sup>th</sup>, October 4<sup>th</sup>, and October 18<sup>th</sup> 2016.

## Background and Chronology

The applicant is seeking Commercial Site Plan approval to codify existing site conditions. As noted in previous materials, this property is the subject of an active Barnstable County Superior court case (Richard Stevens Acting building Commissioner of the Town of Truro v. Michael F. Winkler Trustee et al.) The Planning Board's decision on this Commercial Site Plan application will not determine the outcome of the litigation. Any decision with respect to the Town's position on the litigation will be made by the Town of Truro Board of Selectmen.

For the Board's reference, the chronology of this hearing is as follows:

- May 3<sup>rd</sup> – Hearing opened and testimony given; continued to July 19<sup>th</sup>
- July 19<sup>th</sup> – Hearing opened and further testimony given; continued to September 6<sup>th</sup>
- September 6<sup>th</sup> – Hearing continued to October 4<sup>th</sup>, no testimony given
- October 4<sup>th</sup> – Hearing continued to October 18<sup>th</sup>, no testimony given
- October 18<sup>th</sup> – Hearing continued to December 6<sup>th</sup>, no testimony given

Materials pertaining to this case that were provided to the Board for the May 3<sup>rd</sup> and July 19<sup>th</sup> meetings are posted on the Town website, [www.truro-ma.gov](http://www.truro-ma.gov), together with the agenda and packet for this meeting.

The Planning Board members who were in attendance on both May 3<sup>rd</sup> and July 19<sup>th</sup>, and are therefore eligible to vote on this matter are Mssrs. Sollog, Boleyn, Riemer, and Roderick.

The Board will recall that the subject property is within the Town's Water Resource Protection District, and a portion of the site is within the protective radius of a local public water supply well on an abutting property to the north and south, although the public well on the southerly property is inactive. Pursuant to Section 70.3.C.2 of the Truro Bylaw, the Town engaged Horsley Witten Group to assist the Planning Board in assessing issues associated with ground water

protection. Horsley Witten Group reviewed the site plan and participated in an onsite visit. They issued a letter report to the Town on September 27, 2016 (enclosed).

Subsequently, the applicant revised the site plan to address issues raised in the Horsley Witten report, as well as comments previously made by the Planning Board and project abutters.

The following materials were submitted on November 29, 2016:

Commercial Development Site Plan Review November 28, 2016 Project narrative Update and Waiver Requests, Prepared by Benjamin E. Zehnder

Plan entitled "Site Plan for 1 Noons Heights Road, Truro, MA," Prepared for Michael Winkler and GFM Enterprises, by East Cape Engineering, 1"=40', revised November 18, 2016.

Mark Nelson of Horsley Witten reviewed the updated narrative and site plan, and submitted the following initial comments:

- Fuel tanks – no details on the size or design of the crushed stone pad are provided. Also, it isn't clear if both fuel tanks are protected by this pad.
- The boundaries of the Operations Area are not defined as we discussed at the site visit and in our comment letter.
- The revised plan does not address our comments on stormwater management or the consolidation of parking areas to protect groundwater quality. It is unclear what the regarding in the parking area near Noons Heights Road has accomplished.
- The revised plan also doesn't clarify what buildings, other than Building #1 are connected to the onsite septic system. At the site visit I believe they said Building #4 was used as a restroom for employees.

Mr. Nelson will attend the December 6<sup>th</sup> hearing.

#### **Materials Submitted by the Applicant**

1. Commercial Development Application for Site Plan Review and \$250 fee
2. Commercial Development Site Plan Review Project Narrative and Waiver Requests, Prepared by Benjamin E. Zehnder, LLC, January 13, 2016
3. Truro Assessors' Property Card and map for 1 Noons Heights Road, parcel ID 39-166-0
4. Quit Claim Deed to Lot 6 as shown on a plan of land entitled "Plan of Land in Truro, being a subdivision of Lot 5, as shown in Plan book 450, Page 83, made for Donald W. Noons, Scale: 1 in = 60 ft, Nov. 1994".
5. Notice of Zoning Violation and Enforcement Action, dated February 28, 2014 and signed by E. James Veara, Esq.
6. List of abutters to Map 39 parcel 166 from Truro Board of Assessors
7. Site Plan showing existing buildings and site conditions 1Noons Heights Road, Truro, MA Prepared for Michael Winkler & G.F.M. Enterprises & Ethan Poulin Inc. by East Cape Engineering dated January 13, 2016, scale 1"=40'

8. Letter from Benjamin E. Zehnder, LLC to town of Truro Planning Board, dated March 29, 2016, requesting continuance to May 3, 2016.
9. Commercial Development Site Plan Review Project Narrative and Waiver Requests, Prepared by Benjamin E. Zehnder, LLC, April 11, 2016
10. Site Plan showing existing buildings and site conditions 1 Noons Heights Road, Truro, MA Prepared for Michael Winkler & G.F.M. Enterprises & Ethan Poulin Inc. by East Cape Engineering dated January 13, 2016, revised April 11, 2016, scale 1"=40'
11. Letter from Benjamin Zehnder to Truro Planning Board, dated May 4, 2016, consenting to extending the period of the Board action to 14 days following the July 19<sup>th</sup> continued hearing.
12. Letter from Timothy J. Brady to Carole Ridley, dated May 24, 2016 and received by the Town Clerk on May 25, 2016 Re: 1 Noons Height Road related to information on fuel storage, and with enclosures of color photos and a revised site plan (revised May 24, 2016) showing the location of fuel storage on the site.
13. Plan entitled "Site Plan showing Existing Buildings & Site Conditions 1 Noons Heights Road, Truro, MA" prepared for Michael Winkler & GFM Enterprises by East Cape Engineering, dated April 11, 2016 and revised May 24, June 9, June 29 and July 12, 2016, scale 1"=40'
14. Letter from Benjamin Zehnder to Truro Planning Board, dated July 20, 2016, consenting to extending the period of the Board action to 14 days following the September 6<sup>th</sup> continued hearing.
15. Letter from Benjamin Zehnder to Truro Planning Board, dated September 1, 2016, consenting to extending the period of the Board action to 14 days following the October 4<sup>th</sup> continued hearing.
16. Letter from Benjamin Zehnder to Truro Planning Board, dated September 28, 2016, consenting to extending the period of the Board action to 14 days following the October 18<sup>th</sup> continued hearing.
17. Letter from Benjamin Zehnder to Truro Planning Board, dated October 14, 2016, consenting to extending the period of the Board action to 14 days following the July 19<sup>th</sup> continued hearing.
18. Commercial Development Site Plan Review November 28, 2016
19. Project Narrative Update and Waiver Requests, Prepared by Benjamin E. Zehnder
20. Plan entitled "Site Plan for 1 Noons Heights Road, Truro, MA," Prprepared for Michael Winkler and GFM Enterprises, by East Cape Engineering, 1"=40', revised November 18, 2016.

### **Requested Waivers**

In the Project Narrative Update (November 28, 2016) the applicant has submitted written waiver requests for the following:

- 70.3(D)1( e) - 3 copies of drainage calculations
- 70.3(D)3(c)(1-16) - Proposed conditions plan
- 70.3(D)3(d) - Proposed Landscaping Plan
- 70.3.(D)3( e) - Building Plans
- 70.3(D)3(f) - Project Estimates
- 70.3(D)3(b)(2) - Parking and Walkways



## 70.3(D)3(b)(2) – Lighting Service Areas

### **Additional Town Staff Comments**

Note received as of the writing of this memo.

### **Planning Board Action**

Sections 70.3 F & G of the Zoning Bylaw are provided in blue below. The Board should make findings with respect to each condition, finding the application compliant, non-compliant, suggesting conditions to ensure compliance, or designating as not relevant to the case.

Accordingly, the Board may wish to undertake the following:

1. Vote on waiver requests
2. Make findings with respect to the design criteria, and
3. Vote to approve, conditionally approve or deny the application based on specific reasons.

The Board may also seek to continue the hearing to obtain additional information. A continuance should be made to a date certain and confirmed in writing by the applicant.

### **F. Review Criteria/Design Guidelines**

The Planning Board will review applications and their supporting information based on the following:

1. The proposal is in conformity with all applicable provisions of the Zoning Bylaw.

Note: The applicant has addressed prior setback violations. Building #11 was evaluated in terms of required setback. According to the Building Commissioner, the building could be moved, but likely has been in its currently location for more than ten years, and therefore is considered pre-existing non-conforming. The storage bins have been characterized by the Building Commissioner as akin to fence, and therefore not subject to setback requirements.

The proposed uses of staging area for a crane company and excavation company, storage of equipment and supplies related to the crane and excavation companies, and retail commercial use appear to be consistent with *Wholesale trade, Retail sales, and Trade, repair shop, etc.*, which are permitted uses in the Rt 6 General Business District.

The applicant has provided additional information about the uses of auxiliary buildings. The Board needs to be convinced that the uses of the buildings are consistent with or auxiliary to the purported uses. Through Mr. Zehnder, the applicant has represented that Buildings 9 and 10 are not used for habitation. The Board should seek assurance that none of the buildings on the property are used for habitation.

2. The proposal provides for the protection of abutting properties and the surrounding area from detrimental site characteristics and from adverse impact from excessive noise, dust, smoke, or vibration higher than levels previously experienced from permitted uses.

Note: The applicant has cleared material and equipment from the northern well radius. The Board should be convinced that the vegetative buffer within the 185' private well radius is sufficiently protected. Leyland cypress trees have been planted along the norther property line as screening for the motel property to the north. The revised site plan includes a small berm to control run-off on to the adjacent property at 6 Noons Heights Road. Consideration

could be given to vegetation this berm. Limitations on the hours of operation for heavy equipment to exclude holidays and only during limited hours on weekends could be considered.

3. The proposal provides for the protection of adjacent properties and the night sky from intrusive lighting, including parking lot and building exterior lighting. Lighting must be consistent with Chapter IV, Section 6 of the General Bylaws of the Town of Truro.

Note: No new lighting is proposed. Compliance with dark sky requirements for outdoor lighting and Chapter IV, Section 6 of the General Bylaws of the Town of Truro should be documented.

4. The proposal provides for the protection of significant or important natural, historic, or scenic features.

Note: The applicant has provided a letter from Natural Heritage and Endangered Species Program determining that the project as proposed will not result in a take of state-listed rare species.

5. The building sites shall minimize obstruction of scenic views from publicly accessible locations; minimize tree, vegetation, and soil removal and grade changes; and maximize open space retention.

6. The proposal adequately provides for refuse disposal.

Note: A large dumpster is shown on the plan.

7. The proposed sewage disposal and water supply systems within and adjacent to the site shall be adequate to serve the proposed use.

Note: According to the Health Department, the septic system is permitted for a capacity of 678 gallons per day. Per the plan on file with the Health Department, Building #1 is shown as connected to the septic system. It is not clear if other buildings are connected to this system. Horsley Witten noted that at the site visit, Building #4 was noted as a break room with restroom for employees, and yet is not shown on the plan as being connected to the septic system. This issue should be clarified on the plan, with confirmation that the flow limit of 678 gpd is not exceeded.

8. The proposed drainage system within the site shall be adequate to handle the runoff resulting from the development. Drainage run-off from the project shall not: damage any existing wellfield(s) or public water supply; damage adjoining property; overload, silt up or contaminate any marsh, swamp, bog, pond, stream, or other body of water; or interfere with the functioning of any vernal pool.

Note: The applicant is seeking a waiver from drainage calculations. The applicant relocated the fuel tank closest to the protective radius of the public well, and created a plastic lined pad covered with crushed stoned and gravel to provide an area for fuel transfer. It is noted that the relocated tank is now no longer on a concrete pad, and the Board could consider that as a condition of approval.

The revised site plan does not address stormwater recommendations provide in the Horsley Witten report. The plan shows that a small berm was placed on the western boundary to prevent run-off onto the property at 6 Noons Height Road, and on the southern boundary



where a prior entrance was provided onto Noons Heights Road. Consideration should be given to vegetating the berms to ensure stability.

9. A soil erosion plan shall adequately protect all steep slopes within the site and control runoff to adjacent properties and streets both during and after construction.

Note: Building material, soils or rocks/stones stored or stockpiled on the site could be covered to avoid siltation, or leaching from the rainwater on the materials.

10. The proposal shall provide for structural and/or landscaped screening or buffers for storage areas, loading docks, dumpsters, rooftop or other exposed equipment, parking areas, utility buildings and similar features viewed from street frontages and residentially used or zoned premises.

Note: the revised site plan includes the planting of leyland cypress trees to shield the property from the motel property to the north. A maintenance plan to ensure the ongoing viability of the trees could be considered.

11. Buildings and structures within the subject site shall relate harmoniously to each other in architectural style, site location, and building exits and entrances. Building scale, massing, materials, and detailing should be compatible with the surrounding area.

Note: The applicant has removed a large amount of excess equipment and debris from the site. The site contains numerous types of structures in various states of repair.

12. Electric, telephone, cable, and other such utility lines and equipment shall be placed underground.

Note: Some but not all utilities are located underground. The Board could condition any future work on the site to include the placement of utilities underground for future improvements.

13. The project shall not place excessive demands on Town services.

Note: The applicant does not propose to change demand for town services.

14. The location and number of curb cuts shall be minimized to reduce turning movements and hazardous exits and entrances. Where appropriate and allowable, access to adjoining properties shall be provided. Joint access driveways between adjoining properties shall be encouraged.

Note: The applicant has placed a barrier at the Route 6 entrance as previously discussed with the Board. Existing curb cuts on to should not be altered without proper permits from the Board of Selectmen and/or MassDOT, and modification of site plan review.

15. Convenience and safety of vehicular and pedestrian movement within the site and in relation to adjacent and other ways serving the project shall be maximized. Traffic patterns for vehicles and pedestrians must show safe and adequate circulation within and access to and from the site.

Note: Parking spaces are not marked (surface is unpaved). Use of wheel stops was discussed, but the applicant contends that this would pose a safety and plowing hazard as the location of spaces can vary based on site activities. The applicant has cleared the parking area east of Building 2 so that it is available for parking as shown on the plan. The uses and activities on the site are not conducive to pedestrian traffic.

16. A bicycle rack(s) shall be provided on the site and shall be located near the entrance to the building(s).

Note: This condition does not appear applicable to the site.

G. Findings of the Planning Board

**The concurring vote of four members of the Planning Board** shall approve a Commercial Site Plan in the form submitted or with reasonable conditions, unless it finds that (a) the application for site plan approval is incomplete, or (b) the imposition of reasonable conditions will not ensure that the project will conform to the standards and criteria described herein, or (c) the project does not comply with the requirements of the Zoning By-law.

Cc:

Jaime Veara, Esq. (via email)

Rae Ann Palmer (via email)

Pat Pajaron (via email)

Russ Braun (via email)

Ben Zehnder, Esq. (via email)



**Commercial Development Site Plan Review**  
**November 28, 2016 Project Narrative Update and Waiver Requests**

Winkler Route Six Trust  
1 Noons Heights Road  
Truro Assessor's Parcel ID 39-166

November 28, 2016

*Prepared by Benjamin E. Zehnder LLC*

Please find filed herewith updated site plan (Revision date November 18, 2016) showing current conditions including the following revisions:

**A. To address Horsley and Witten Report dated September 26, 2016:**

1. Fuel tank previously shown on north east side of Building #3 removed and relocated to south operations area away from 155' protective well radius of norther abutter – Placed on pad of crushed stone over plastic liner.
2. The two fueling areas are consolidated into one area by this move.
3. Prior access road on south side of property on to Noons Heights Road filled and regraded to control runoff within property.
4. Operations areas are clearly defined.
5. Dumpster is shown west of Building #3 – dumpster location will change within site depending upon operations.
6. Storage containers on west side of property shown on plan – all storage containers and buildings are shown on plan.

**B. To address Planning Board and Abutter Concerns:**

7. (20) 8' Leland Cypress and (4) 8' Leland Cypress planted along and within north boundary line to screen operations from motel.
8. Sand storage area moved from north side of property to south west side to move away from motel.
9. Berm graded along south west side of property to control runoff onto westerly abutter.
10. Storage bins on east side of property relocated to remove encroachment into State Highway layout.
11. Future office building shown west of Building #3 removed from plan - will not be constructed.
12. Former Building #7 (previously shown immediately westerly of Building #6) removed to eliminate zoning encroachment.
13. Storage buildings and trailers removed from parking area servicing Buildings #1 and #2.

### C. Building and Storage Container Notes

The plan indicates the buildings on the property and their floor areas. Buildings 1 and 2 are rented for retail use as previously permitted. Building 3 is used for maintenance and storage of equipment and vehicles as previously permitted. Building 4 is used for an office for the crane business. Buildings 5 and 6 are temporary sheds used for off-site crane operations. Buildings 8, 9, 10 and 11 are sheds used for storage of materials and equipment. No buildings are used as dwellings.

#### Waiver Requests:

Pursuant to Bylaw §70.3(E) and for the following reasons, the applicant hereby requests waivers from the following Commercial Development Site Plan Review requirements of Bylaws §70.3(D):

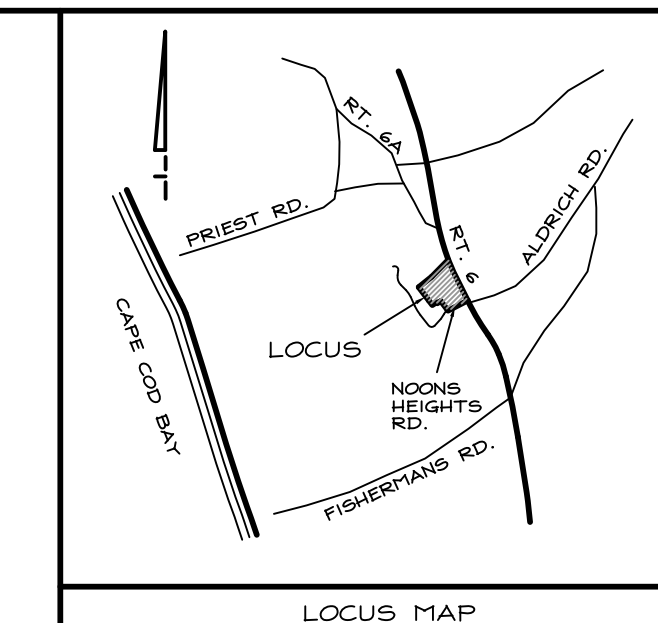
- §§1(e) – *3 copies of drainage calculations stamped by a Professional Engineer*  
Reason – The site is level and is primarily made up of permeable well-draining sand. The Board has visited the site following rain events and there is no ponding or drainage off-site except as addressed by the Applicant on the west and south side of the property in response to abutter concern and the Horsley and Witten Report. Engineering and construction of drainage system for this property is unnecessary, would be very expensive, and is outside the scope of review herein where there is no change of permitted use.
- §§3(c)(1 - 16) – *Proposed Conditions Plan;*  
Reason – The site plan reflects existing and proposed conditions.
- §§3(d) – *Proposed Landscaping Plan;*  
Reason – The site plan reflects existing and proposed conditions and incorporates vegetated screening areas on the north, west and south sides of the property.
- §§3(e) – *Building Plans;*  
Reason – There are no proposed changes to the existing buildings. The “Proposed Office Building” as previously approved by the Planning Board has been removed from the plan and is not to be constructed.
- §§3(f) – *Project Estimates.*  
Reason – There are no project estimates as the site conditions are presently existing.
- §§3(b)(2) – *Parking and Walkways.*  
Reason – Parking exists as shown on the plan. There are no proposed walkways.

➤ §§3(b)(2) – *Lighting Service Areas*

Reason – There are no proposed lighting changes. There is exterior lighting on Building #3 and photo of lighting is submitted.

The Planning Board may grant waivers from the Commercial Development Site Plan Review requirements pursuant to Bylaws §70.3(E) where, in the opinion of the Board, such waivers would not be detrimental to the public interest, cause the Town any expense, or be inconsistent with the intent and purpose of the Commercial Development Site Plan Review Bylaw. The applicant respectfully submits that the above-listed requirement waivers are appropriate under the §70.3(E) criteria.

END



ROUTE 6 GENERAL BUSINESS  
 30.2 PROPOSED USE- EQUIPMENT SERVICE, REPAIR, AND STORAGE  
 30.9 PARKING (PER TABLE 30.9)  
 10 WINKLER CRANE EMPLOYEES AT 1 SPACE PER EMPLOYEE = 10 REQUIRED  
 (10 SPACES AT 300 Sq.Ft. PER SPACE = 3000 Sq.Ft. REQUIRED)  
 6 G.F.M. EMPLOYEES AT 1 SPACE PER EMPLOYEE = 6 SPACES REQUIRED  
 (6 SPACES AT 300 Sq.Ft. PER SPACE = 2400 Sq.Ft. REQUIRED)  
 1728 Sq.Ft. RETAIL SPACE AT 1 SPACE PER 150 Sq.Ft. = 12 SPACES REQUIRED  
 (INCLUDES BUILDING #1 AND 1/2 OF BUILDING #2)  
 30.10 NO SIGN PROPOSED - SIGNS ON EXISTING BUILDINGS

**ZONING COMPLIANCE SCHEDULES (SECTION 50.1)**  
 RE: BUILDING #3

LOT AREA	REQUIRED	PROPOSED	EXISTING	TOTAL
33,750 SQUARE FEET			4.43± ACRES 192,869 Sq.Ft.	4.43± ACRES 192,869 Sq.Ft.
LOT FRONTAGE	150 FT.		568.96' (ROUTE 6)	568.96' (ROUTE 6)
FRONT YARD SETBACK	25 FT.	105'±		
SIDE YARD SETBACK	25 FT.	155'±		
BUILDING HEIGHT	2 STORIES; 30 FT.	1-STORY 29'±		
LOT COVERAGE		6,480 Sq.Ft. (3.3%)	3,644 Sq.Ft. (1.9%)	10,124 Sq.Ft. (5.2%)

-THE ABOVE INFORMATION TAKEN FROM SITE PLAN DATED MAY 27, 2009  
 -THERE ARE NO WETLANDS ON SITE  
 -PROPERTY IS IN FLOOD ZONE X AS SHOWN ON FLOOD MAP PANEL 25001C0139J  
 -PROPERTY IS IN A ZONE II OF A MUNICIPAL WATER SUPPLY  
 -UNDERGROUND UTILITY LOCATIONS ARE APPROXIMATE AND SUBJECT TO FIELD VERIFICATION

BUILDING #	BUILDING AREA (sq.ft.)	BUILDING STORY'S	BUILDING HEIGHT (FT.)	BUILDING USE
1	993	1	13	COMMERCIAL
2	1,465	1	15	COMMERCIAL
3	6,546	1	29	STORAGE
4	198	1	12	OFFICE
5	133	1		TEMPORARY
6	171	1		TEMPORARY
7	171	1		REMOVED
8	146	1	11	SHED
9	200	1	13	SHED
10	299	1	13	SHED
11	299	1	11	SHED

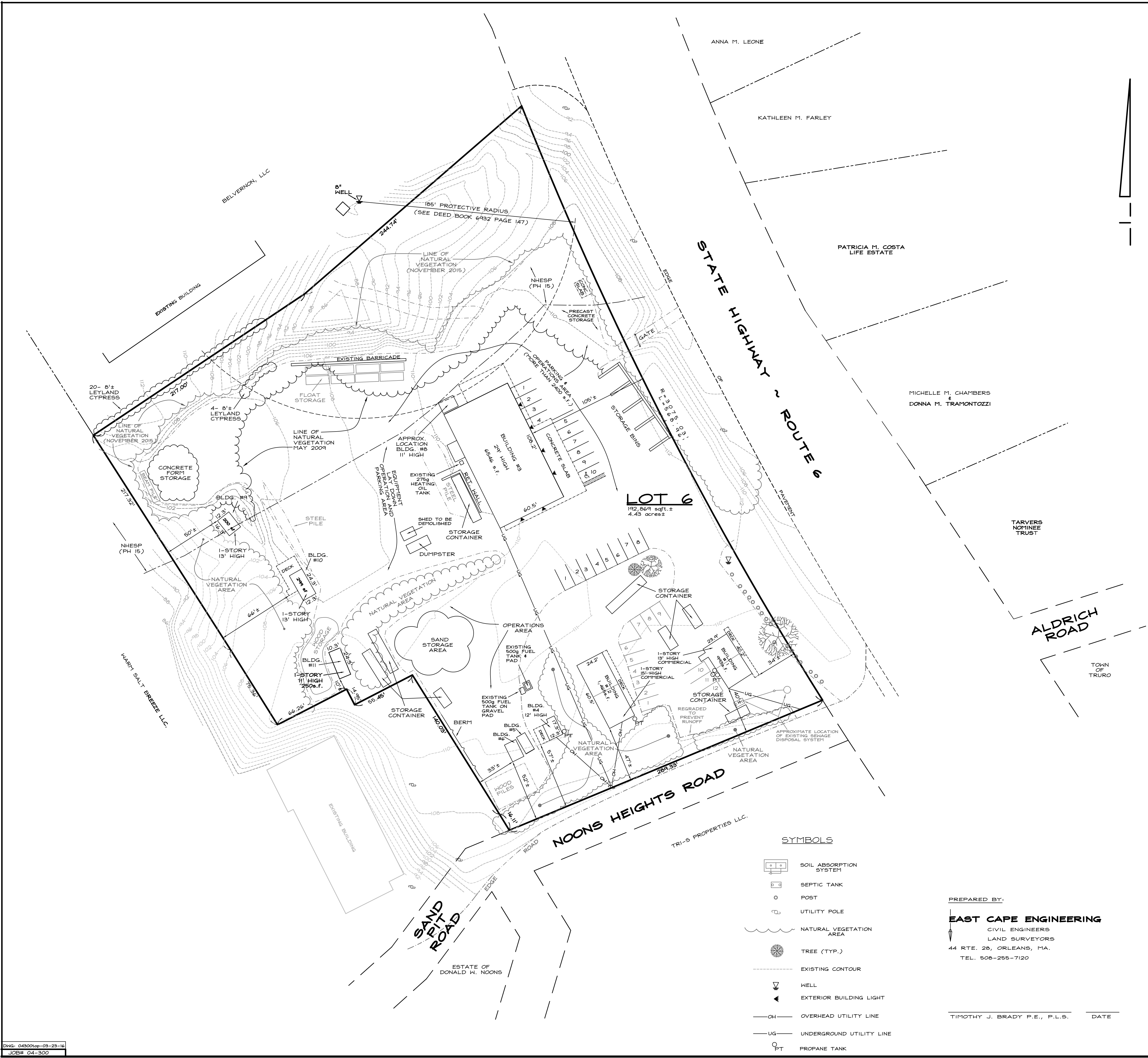
**SITE PLAN**  
 SHOWING EXISTING BUILDINGS & SITE CONDITIONS  
**1 NOONS HEIGHTS ROAD**  
**TRURO, MA**

PREPARED FOR:  
**MICHAEL WINKLER & G.F.M. ENTERPRISES**

P.O. BOX 1110, TRURO, MA 02666  
 SCALE: 1"=40' JANUARY 13, 2016  
 REVISED: APRIL 11, 2016  
 REVISED: MAY 24, 2016  
 REVISED: JUNE 9, 2016  
 REVISED: JUNE 29, 2016  
 REVISED: JULY 12, 2016  
 REVISED: AUGUST 31, 2016  
 REVISED: NOVEMBER 18, 2016



REF: ASSESSORS MAP 39, PARCEL # 166  
 DEED BOOK 17926 PG 238  
 PLAN BOOK 540 PG 4



- SYMBOLS**
- SOIL ABSORPTION SYSTEM
  - SEPTIC TANK
  - POST
  - UTILITY POLE
  - NATURAL VEGETATION AREA
  - TREE (TYP.)
  - EXISTING CONTOUR
  - WELL
  - EXTERIOR BUILDING LIGHT
  - OVERHEAD UTILITY LINE
  - UNDERGROUND UTILITY LINE
  - PROPANE TANK

PREPARED BY:  
**EAST CAPE ENGINEERING**  
 CIVIL ENGINEERS  
 LAND SURVEYORS  
 44 RTE. 26, ORLEANS, MA.  
 TEL. 508-256-7120

TIMOTHY J. BRADY P.E., P.L.S.      DATE

CIVIL ENGINEERING  
WATER RESOURCES  
ENVIRONMENTAL  
SANITARY  
STRUCTURAL  
WATERFRONT

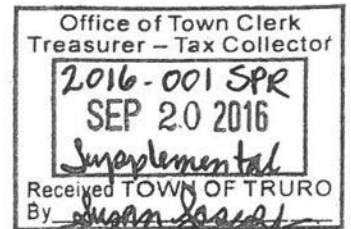
## *east cape engineering, inc.*

44 Route 28  
P.O. Box 1525  
Orleans, MA 02653

508-255-7120 PHONE  
508-255-3176 FAX

WEB SITE: [www.eastcapeengineering.com](http://www.eastcapeengineering.com)

August 31, 2016



LAND SURVEYING  
LAND COURT  
SITE PLANNING  
CERTIFIED PLANS

Ms. Carole Ridley, Planning Consultant  
Town of Truro  
P. O. Box 2030  
Truro, MA 02666

Re: 1 Noons Heights Road, Truro

Dear Ms. Ridley,

Below is a list of all equipment and materials on site at 1 Noons Heights Road with comments as necessary.

### **Vehicles and Equipment**

- Trucks and trailers (equipment and dump)
- Cranes (tracked & rubber tire)
- Crane equipment and accessories (hammers, shovels, pulleys, etc.)
- Excavating equipment and attachments (buckets, compactors, mowers, etc.)
- Diesel air compressor
- Material conveyor on wheels
- Steel trench box
- Wood landing mats
- Concrete form panels in racks
- Wood cribbing
- Steel street plates 8'x20'+/- (10 pieces +/-)

### **Material**

- Scrap metal pile (approximately 100 square feet)
- Stone and gravel in bins
- Concrete block risers, distribution boxes, catch basins
- Perforated PVC pipe
- Steel pilings, sheeting and beams
- Pressure treated poles, 12" +/- diameter (40 pieces)
- Firewood (small stack)
- Corrugated plastic pipe various diameters up to 20' in length (10 pieces +/-)

**Fuel**

- 2 skid mounted fuel tanks
- 1 heating oil tank
- 1 propane tank

**Miscellaneous**

- 5-6 fiberglass boats
- Boat trailers
- 4-5 storage containers (8'x20' to 8'x40' mostly household storage)
- Previously cleaned fuel storage tank to be junked
- Several lobster pots
- Several mobile storage sheds
- Barge shed
- Miscellaneous concrete slabs and curbs
- Office trailer
- Several fiberglass skylight panels
- Junked tires (20 +/-)
- Parade float
- Concrete moorings
- 3-4 mobile dumpsters
- Monopole fence barrier
- Dock floats

Inside the buildings are materials typical for these types of operations. These include 55-gallon drums (oil, waste oil, hydraulic fluids), tools, small engine equipment (mower, air compressor, compactor, etc.), welding and cutting equipment, battery charger, pressure washer, miscellaneous lubricants and sprays in small cans, miscellaneous gas cans (1-5 gallons).





September 27, 2016

Rae Ann Palmer, Town Manager  
Town of Truro  
24 Town Hall Road  
P.O. Box 2030  
Truro, MA 02666

RE: Peer review of Commercial Site Plan Review application for 1 Noons Heights Road,  
Truro, Massachusetts

Dear Ms. Palmer:

As you requested, the Horsley Witten Group, Inc. (HW) has conducted a peer review of the Application for Commercial Site Plan Review provided on behalf of Michael Winkler, the owner of the subject property at 1 Noons Heights Road. In the course of our review HW staff attended a site visit at the property on September 15, 2016 and reviewed the following application documents:

- Site Plan, 1 Noons Heights Road Truro, MA last revision date August 31, 2016 prepared by East Cape Engineering.
- Commercial Development Site Plan Review Project Narrative and Waiver Requests dated April 11, 2016 and prepared by Benjamin E. Zehnder LLC.
- Letter to Carole Ridley, Planning Consultant from East Cape Engineering regarding equipment and materials on the property, dated August 31, 2016.
- Site Plan, 1 Noons Heights Road Truro, MA last revision date May 27, 2009 prepared by East Cape Engineering.

The site lies within the Town's Water Resource Protection District that constitutes the wellhead protection area to a public water supply in Provincetown (Figure 1). It is also within the interim wellhead Protection District to two local public water supply wells on the abutting properties to the north and south of the site. The Zone I protective areas to these two wells extend onto the applicant's property. The Zone I to the well on the abutting property to the north is shown on the site plan. There is also a Zone I on the abutting commercial/industrial business to the south across Noons Heights Road. A Zone I is a protective radius around a well that is sensitive to land uses that can impact drinking water quality.

The applicant's site is unpaved, with trucks, equipment and construction materials located in areas of sand and gravel around the main buildings on the property. Therefore if a release of pollutants or hazardous materials occurs, the potential exists for it to infiltrate through the permeable sands and enter the underlying aquifer where it can flow towards one of the public supply wells. The comments on the site plan provided below are focused on minimizing this risk to drinking water quality both for the abutting public supply wells and for the community well in Provincetown.



The well and associated Zone I associated with the property to the south of the subject site should be added to the plan. An analysis of the land uses within the Zone I should also be provided, including their potential to impact the quality of water pumped from the well. During the September 15, 2016 site visit, HW identified a drainage gully collecting runoff from the parking and storage area between Buildings #1 and #2 and discharging it onto Noons Heights Road within the Zone I area. This runoff should be captured, treated and infiltrated on site as discussed further in comments on drainage provided below. The stormwater infiltration should be located outside of the Zone I area.

There are three above ground storage tanks on the site: two for fueling of vehicles and one for heating oil for the Building #3. The vehicle fueling tank on the north side of building #3 is just outside the Zone I to the public water supply well on the adjacent property to the north.

While the fuel tanks are double walled, they are on small concrete pads that are not designed to contain a spill. Therefore a release of fuel during a transfer will flow onto the surrounding sand and gravel and can rapidly infiltrate into the ground. HW recommends that measures be developed to contain a spill prior to it reaching the sandy soils around the tanks. Options could include:

- Extending the size of the concrete pad to accommodate the trucks using the tank and adding a berm or impermeable sump to capture any fuel during a release. A roof over the pad may be needed to prevent rain from mixing with the fuel if a release occurs, or:
- Creating a crushed stone dust soil layer around the concrete pad with a liner 1 foot below this layer. The soil would be designed to hold the weight of the trucks using the tanks and to be absorbent enough to capture any fuel released during a spill. The liner beneath the soil layer should be graded at an angle to keep infiltrating precipitation from pooling within the soil layer.

Also, if fuel is to be stored on the site, the consolidation of the two fueling stations into one, located further from the drinking water wells, and designed to capture a spill would minimize the threat to drinking water quality.

As discussed during the September 15<sup>th</sup> site visit, a clearly defined “operations area” should be shown on the site plan, designating where outdoor activities associated with the two main businesses on the site will be located. The operations area should be consolidated to the extent practical, and should avoid the Zone I areas to the abutting public water supplies.

The activities taking place within the mapped operations area should also be clearly defined and materials and items not associated with the activities of the businesses should be removed. Vehicle maintenance should not take place on exposed sand areas where releases of hazardous materials cannot be contained.

The delineated parking areas should be located outside of the designated operations areas and as far from drinking water wells as feasible to minimize the risk of pollutants such as hydrocarbons impacting drinking water quality.

The applicant has requested a waiver from the requirement to provide drainage calculations. Given the risk to drinking water supplies, a stormwater drainage analysis should be conducted and stormwater treatment and infiltration practices should be implemented for the designated operations areas, and any parking and travel lanes on the site. Section 30.4(C)(1) of the Town's Water Resource Protection District regulations require that "runoff shall be directed toward vegetated swales or basins for surface infiltration. These swales or basins could include rain gardens or bioretention areas that can adsorb gasoline, diesel fuels and other pollutants generated at the site before they infiltrate into the ground. The Planning Board could consider phasing the construction of the stormwater infrastructure with the priority given to areas within the Zone I areas to the two public water supplies.

Significant changes in property elevation are observed between the 2009 and 2016 site plans. The area to the west of Building #3 has been filled in and flattened. Elevations in this area are up to 16 feet higher than on the 2009 plan. It is unclear how this has impacted stormwater flow and this is another reason the drainage analysis should be completed. The applicant should confirm what fill material was placed in this area to confirm it will not impact groundwater quality.

During the site visit the applicant said that buildings other than the Building #1 are connected to the septic system shown on the plan. If so, these connections to the system should be shown and the applicant should provide calculations to confirm the system is sized to handle the activities at the site.

The site plan should depict show all existing features on the site. Uses not shown include trailers on the south west corner of the site, trailers and containers between Building #1 and #2 and storage areas for septic system components on the eastern property boundary with Route 6.

The dumpsters shown on the plan within the Zone I for the public supply well on the abutting property to the north should be moved outside of the Zone I if they are to remain. The use of the dumpsters and the materials stored in them should be documented.

As discussed above, the focus of this review has been on the potential for impacts to public supply wells. The improvements to the fuel storage facilities and the development of appropriate stormwater management practices have the greatest potential to minimize the risk to drinking water quality at the site. While both are important, improving the fuel storage facilities reduces the impacts of a large fuel spill. If the Planning Board decides to require these site improvements, and allows them to be phased, it makes sense to upgrade the fuel facilities first, and then build the stormwater treatment facilities in the Zone I areas, followed by the remaining stormwater facilities. These phasing recommendations are based on the assumption that

Ms Rae Ann Palmer  
Revised September 27, 2016  
Page 4

designated parking and operations areas are confirmed and non-essential containers, trailers and materials are removed from the site.

Sincerely,

HORSLEY WITTEN GROUP, INC.

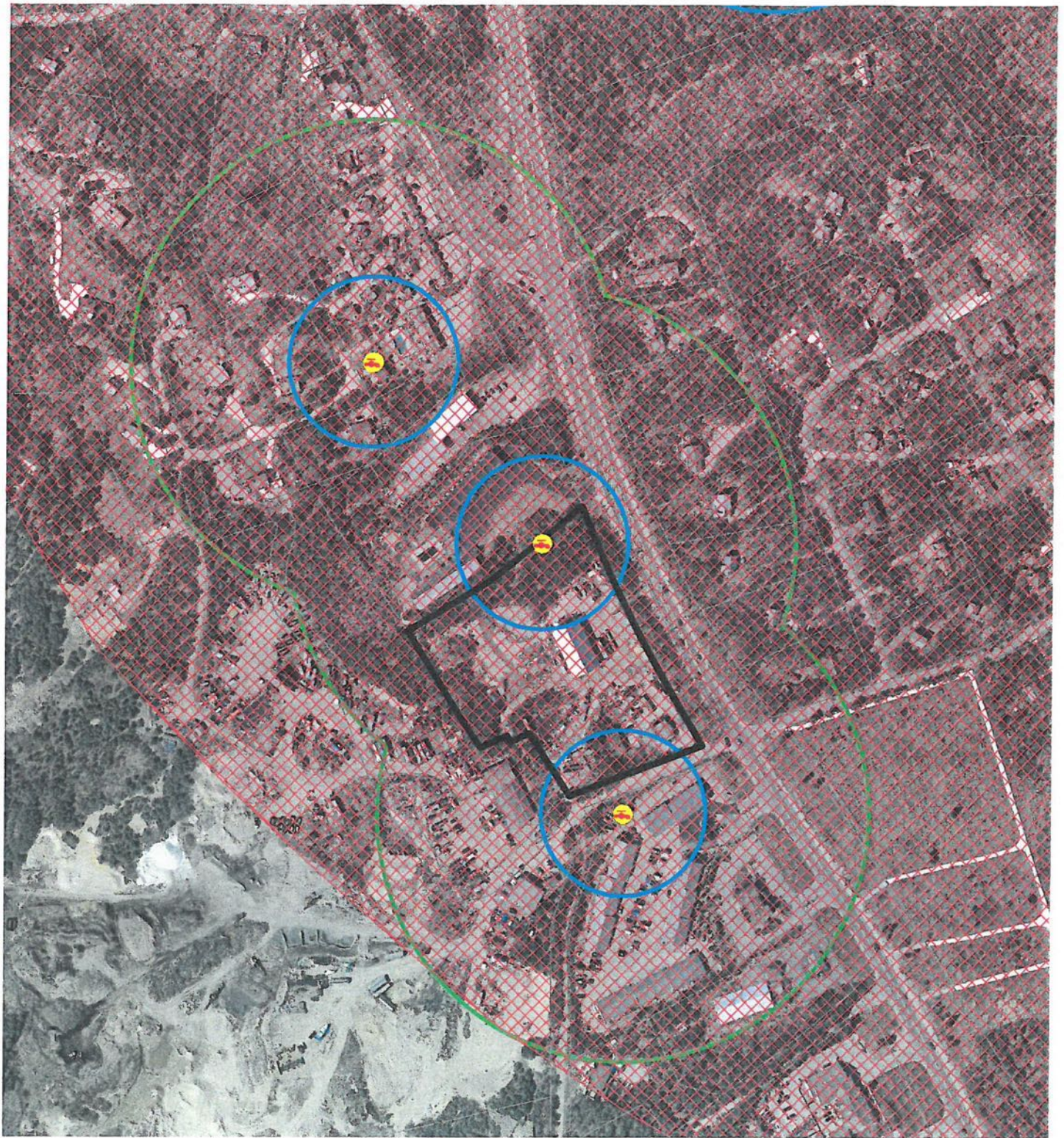


Mark E. Nelson, P.G.  
Principal



Joseph Longo  
Principal





Document Path: H:\Projects\2016\16123 Truro\_1 Noons Heights Rd\GIS\Maps\Existing\_Constraints\_revised.mxd

**Legend**

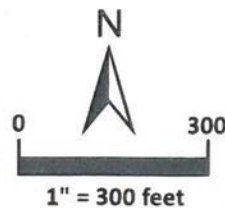
-  Site Parcel
-  Parcels
-  Non-Community Groundwater Source
-  IWPA
-  DEP Approved Zone I
-  DEP Approved Zone II

\*GIS Data - MassGIS

**Horsley Witten Group**  
 Sustainable Environmental Solutions  
 90 Route 6A • Unit 1 • Sandwich, MA 02563  
 508-833-8800 • horsleywitten.com



**Public Water Supplies  
 near 1 Noons Heights Road  
 Truro, MA**



Date: 9/23/2016

Figure 1



## Initial thoughts on revised Winkler site plan

Mark Nelson <[mnelson@horsleywitten.com](mailto:mnelson@horsleywitten.com)>

Wed 11/30/2016 4:43 PM

To: Carole Ridley <[cr Ridley@truro-ma.gov](mailto:cr Ridley@truro-ma.gov)>;

Hi Carole,

Here are a few initial thoughts as I review the updated plan.

Fuel tanks – no details on the size or design of the crushed stone pad are provided. Also, it isn't clear if both fuel tanks are protected by this pad.

The boundaries of the Operations Area are not defined as we discussed at the site visit and in our comment letter.

The revised plan does not address our comments on stormwater management or the consolidation of parking areas to protect groundwater quality. It is unclear what the regarding in the parking area near Noons Heights Road has accomplished.

The revised plan also doesn't clarify what buildings, other than Building #1 are connected to the onsite septic system. At the site visit I believe they said Building #4 was used as a restroom for employees.

Mark E. Nelson, P.G., LSP  
Principal  
Horsley Witten Group  
90 Route 6A  
Sandwich, MA 02563  
(508) 833-6600  
(508) 833-3150 - fax  
[mnelson@horsleywitten.com](mailto:mnelson@horsleywitten.com)  
[www.horsleywitten.com](http://www.horsleywitten.com)

# 1 Noons Heights Rd

Pat Pajaron

Mon 10/3/2016 10:51 AM

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

📎 1 attachment

1 Noons Heights.pdf;

Carole,

I had a chance to review the peer review letter from Horsley and Witten Group regarding the activities at 1 Noons Heights Road. I agree with comments made regarding the relocating the two fueling stations and consolidating them into one with a concrete pad for sized for containment, located as far away from the drinking water wells. This should be a first priority this first would be a first priority to protect the wells from contamination. BOH Fuel Storage Regulations require 110% containment capacity to prevent contamination from leaks that may occur. Exterior fuel oil storage tanks must be covered to prevent water accumulation within containment in such a way that it satisfies the Board of Health and the Fire Department. The area beneath the exterior shall be 4 inch thick continuous concrete slab.

H&W Group state on page 3 that "during the site visit the applicant said that buildings other than the Building #1 are connected to the septic system shown on the plan." Per the site and sewage plan on file with the Health Dept., Building #1 is shown as being connected to this system. It is possible that building #2 was connected at the time the building was proposed back in 2004. This could be the case for Building #4.

Building #2 and Building #4 are indicated as commercial and office space. Back in 2009, when I reviewed the site plan for a proposed 20 x 20 office space, Building #4 was labeled as employee restrooms. There are no septic permits on file with the health department to connect any of these buildings to the existing system.

Per the attached letter from East Cape Engineering, the existing system is adequate for 678 gallons per day. The connections should be shown on the plans as well as what the buildings are used for and flow calculations for each. This flow will be established as the "approved capacity." Any proposed flow above the approved capacity will require an upgrade to Title 5 for new construction.

Pat  
Patricia Pajaron, RS  
Conservation/Health Agent  
Town of Truro  
508-349-7004 x32  
FAX 508-349-5508

*east cape engineering, inc.*

44 Route 28  
P.O. Box 1525  
Orleans, Mass. 02653

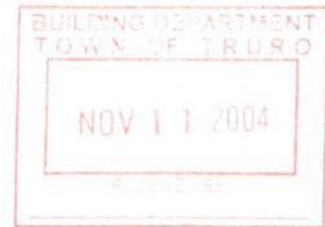
508-255-7120  
Fax 508-255-3176

LAND SURVEYING  
LAND COURT  
SITE PLANNING  
CERTIFIED PLANS

CIVIL ENGINEERING  
WATER RESOURCES  
ENVIRONMENTAL  
SANITARY  
STRUCTURAL  
WATERFRONT

November 9, 2004

Susan Rask  
Truro Board of Health  
P.O. Box 2030  
Truro, MA 02666



RE: Winkler Construction – Route 6, North Truro

Dear Susan:

Enclosed please find several items for Winkler Construction on Route 6 in North Truro. It is proposed to locate a temporary 24'x 60' building at the site owned by Winkler Construction on 4.4+/- acres of land. There is an existing Title 5 septic system at the site which was inspected September 25, 2003. Existing uses at the site include a hairdresser with two chairs and 560+/- sq.ft. of office space. The septic system report indicates that there is a 6x6 leaching pit with 3 ft. of stone in coarse soil. Under the original Title 5 regulations, this leach pit is adequate for 678 gallons per day.

Existing flows at the site are 200 gallons per day for the two chairs in the hairdressers and 42 gallons per day for the 560 sq.ft. of office space. The additional use of the proposed building will be four employees at 15 gallons per day. This makes a total flow of 302 gallons per day in a system with a capacity of 678 gallons per day. There is sufficient pitch at the site from the proposed building to the existing septic tank to allow a new soil pipe to be installed and gravity fed to the septic tank. It is my opinion that the existing septic system is adequate for the proposed temporary building.

I trust that this information is sufficient. If you have any questions or need any further information, please feel free to contact me anytime.

Sincerely,

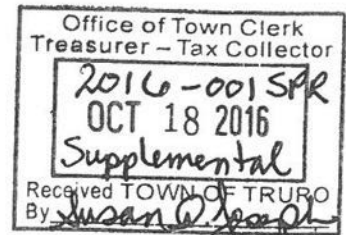
A handwritten signature in black ink that reads "Timothy J. Brady".

Timothy J. Brady, P.E., P.L.S.  
President-East Cape Engineering, Inc.

TJB:jlo  
enclosures



**Benjamin E. Zehnder LLC**  
177 Route 6A  
Orleans, Massachusetts 02653



**Benjamin E. Zehnder, Esq.**  
bzehnder@zehnderllc.com

**U.S. Postal Address:**  
P.O. Box 2128  
Orleans, MA 02653  
Tel: (508) 255-7766  
Fax: (508) 255-6649

October 14, 2016

Town of Truro Planning Board  
P.O. Box 2030  
Truro, MA 02666  
Attn: Carole Ridley, Town Planner  
Via email cridley@truro-ma.gov and first class mail

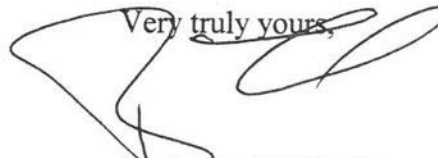
Re: 1 Noons Heights Road, Truro  
2016-001 Commercial Development Site Plan Review

Dear Ms. Ridley:

This correspondence constitutes my client Michael F. Winkler, Trustee's request for a continuance of the Planning Board's October 18, 2016 continued hearing of this matter to the Board's December 6, 2016 regular meeting date. As reason therefore, the applicant is implementing certain recommendations made by the Town's engaged expert Horsely and Witten concerning site drainage and fuel tank location and protection, and following implementation must secure a revised site plan for filing at least 10 days in advance of the continued hearing date.

The applicant hereby consents to tolling of the time for the Planning Board to render it's decision until a date 14 days following a December 6, 2016 continued hearing of this matter. I have included herewith a second original copy of this letter for your filing with the Truro Town Clerk.

Thank you for your attention.

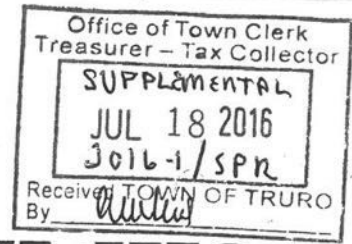
Very truly yours,  
  
Benjamin E. Zehnder

cc via email only:  
client  
E. James Veara, Esq.



Commonwealth of Massachusetts

# Division of Fisheries & Wildlife



Jack Buckley, *Director*

July 15, 2016

Michael Winkler  
PO Box 1110  
Truro, MA 02666

RE: Applicant: Michael Winkler  
Project Location: 1 Noons Heights Road, Truro  
Project Description: After-the-fact filing for Clearing, Stockpiling  
NHESP Tracking No.: 16-35719

Dear Applicant:

Thank you for submitting the MESA Project Review Checklist, project plans (dated January 13, 2016, revised June 9, 2016) and other required materials to the Natural Heritage and Endangered Species Program of the MA Division of Fisheries & Wildlife (the "Division") for review pursuant to the Massachusetts Endangered Species Act (MESA) (MGL c.131A) and its implementing regulations (321 CMR 10.00).

Based on a review of the information that was provided and the information that is currently contained in our database, the Division has determined that this project, as currently proposed, **will not result in a prohibited "take"** of state-listed rare species. This determination is a final decision of the Division of Fisheries & Wildlife pursuant to 321 CMR 10.18. Any changes to the proposed project or any additional work beyond that shown on the site plans may require an additional filing with the Division pursuant to the MESA. This project may be subject to further review if no physical work is commenced within five years from the date of issuance of this determination, or if there is a change to the project.

Please note that this determination addresses only the matter of state-listed species and their habitats. If you have any questions regarding this letter please contact Emily Holt, Endangered Species Review Assistant, at (508) 389-6385.

Sincerely,

Thomas W. French, Ph.D.  
Assistant Director

cc: Timothy Brady, East Cape Engineering, Inc.

[www.mass.gov/nhesp](http://www.mass.gov/nhesp)

# Planning Board Survey Truro

Carole Ridley <cr@ridleyandassociates.com>

Thu 12/1/2016 9:01 AM

To: Carole Ridley <cr@ridleyandassociates.com>;

**From:** Elisabeth Grunig <[elisabeth.grunig@gmail.com](mailto:elisabeth.grunig@gmail.com)>  
**Subject:** Planning Board Survey Truro  
**Date:** November 28, 2016 at 12:05:10 PM EST  
**To:** [cr@ridleyandassociates.com](mailto:cr@ridleyandassociates.com)

Ms Ridley please forward to Mr Sollog as his address came back as invalid each time I tried to send as did your [ma.gov](http://ma.gov) address.

Thank you

Planning Board Chairman  
Steven Sollog

Dear Mr Sollog:

My name is Elisabeth M Grunig and I am a non-resident taxpayer in Truro, Ma. Unfortunately, having to have my mail forwarded to Truro each summer, I somehow did not receive the survey the town sent regarding the size of future homes in the National Seashore area of Truro.

When it was brought to my attention, I very much wanted to voice my opinion and thus am writing to you, so it can be entered into the record of the next planning board meeting.

My husband's family has owned our home on Longnook Road for over sixty years, before the National Seashore was even established.

After we were married, my husband, George H. Grunig, and I decided to renovate our home and met not only with the town representatives to obtain permits, but also with the Superintendents of the Park. Our renovation and additions took over twenty five years due to financial constraints and each renovation and addition was completed with approval of the town and the Park.

We have always felt privileged to live within the Park and Truro and willingly followed all Park guidelines, not just because we thought they were "rules", but equally because we wanted to maintain the area's beauty and integrity.

It concerns me greatly that owners now want to build "McMansions" in Truro outside the Park's guidelines. Despite owning three plus acres, we were satisfied to limit our additions as per the established guidelines in order to maintain the Park's natural environment and for the sake of our neighbors.

The National Seashore and all National Parks are a gift and privilege to all who enter them. They are a sacred trust given to us for present and future generations. It is so very important even if it means restricting the size of privately owned homes. Truro is amazing and even more unique, natural, beautiful and peaceful because it is partially in the Park.

My only hope is that the town of Truro recognizes this and will help insure its' natural beauty for future generations

# Selectmen debate Seashore house size

By John G. Ives

TRURO — For years the planning board has attempted to formulate limitations on the size of houses — a defensive response to the perceived threat of oversized homes ruining the town's rural quality — but such proposals have always been rejected at town meeting.

At a joint Nov. 15 meeting of the board of selectmen and the planning board, the town's leaders considered a new planning board proposal to restrict the size of houses and the expansion of existing properties within the portions of Cape Cod National Seashore in Truro. Such restrictions applicable only to the Seashore district, it is hoped, might have a better chance of being accepted by town voters. But many residents whose homes are in the Seashore dispute the need for such regulations.

"Most of the excesses occur not in the Seashore but outside the Seashore district," said Nick Brown of Thomas D. Brown Real Estate, a former planning board member.

Several selectmen and planning board members at the meeting made the same point: over a period of decades, they said, there has been no evidence of abuse or any trend toward larger homes in the Seashore.

Selectman Bob Weinstein took it one step further, saying, "This is a solution to a problem that does not exist." Under the proposal, a house on a three-acre lot — the minimum size building lot in the Seashore District — could have by right no more than 3,600-square-feet of livable floor area. An additional 200 square feet of floor area would be allowed per additional acre of land. The proposal also allows property owners to apply for a special permit from the zoning board of appeals for up to 1,000 additional square feet.

The proposed regulations not only provide for a limitation on permissible house size, but would also limit houses to less than two full stories in height — "to be harmonious with the neighboring structures ... predominant in the Seashore district" — and set complex standards regarding what several board members referred to as aesthetic decisions. These would include building and landscape materials, native species and natural vegetation, minimal use of lawns and retaining walls, and maintaining the visual integrity of ridge-lines. Several selectmen pointed out that most of the houses in the whole town are already two stories in height, and objected to such micro-management of what have traditionally been considered personal homeowner choices.

"My concern is when you add in 'aesthetic policing' you give town residents a reason for voting it down," Selectmen Chair Paul Wisotzky said.

The proposed regulations have not been reviewed by town counsel KP Law (formerly known as Kopelman and Paige), and the consensus among both boards was

to hold off on further action until that review comes in, which is expected sometime this week.

Selectman Jay Coburn suggested the board offer town meeting voters two options simultaneously: a set of house-size restrictions applicable just to the Seashore district, and a comparable set of restrictions that would cover the entire town. Selectman Jan Worthington expressed concern over the amount of time remaining for the board to get even one proposal ready for town meeting, let alone two, and several members of both boards agreed the primary goal should be presenting a proposal with at least a chance of succeeding.



## TRURO



**Planning Board Meeting with Truro Board of Health**

**DRAFT**

**November 16, 2016—5:30 pm**

**Meeting Minutes**

**Truro Town Hall**

Steve Sollog opened the joint meeting between the Board of Health and Planning Board at 5:29 pm. Tracy Rose opened the meeting of the Water Resources Oversight Committee with the Board of Health and the Planning Board.

Planning Board Members Present: Bruce Boleyn, Peter Herridge, Paul Kiernan, Jack Riemer, Steve Sollog. Planning Board Member Absent: John Hopkins and Mike Roderick.

Board of Health Members Present: Tracey Rose, chair, Jason Silva, Mark Peters, Ansel Chaplin, Pat Pajaron, Health Agent.

Water Resources Oversight Committee members present: Peter Romanelli, Bill Worthington.

Ms. Ridley spoke first to provide background and an overview of what the Planning Board hopes to accomplish with this meeting. Ground water resources are protected under the Truro Zoning By-law section 30.4. This does not apply to the entire Town; it only applies to a mapped area which are the zones of contribution to the public wells that service the town of Provincetown. The Board of Health regulations don't focus as much on the ground water protection other than on nitrogen levels, but not other contaminants. The Planning Board has been looking at revising section 30.4 upon being contacted by the Town of Provincetown water department, requesting that Truro take a look at wellhead protection regulations and enhance those. They are requesting a modification of the boundary of the water resource protection area to include an area that services the north union field well site. Two maps were distributed, one of the existing water protection overlay area and one that the town of Provincetown generated which shows the north union field well area. This is a more up to date map of the Zone 2. There is the question of updating the map of the Water Resources Overlay District, as well as the regulations.

Ms. Ridley suggested that the groups involved, the Planning Board, Board of Health and the Water Resources Protection Committee, might want to create a work group to address these two issues.

Ms. Rose spoke about Board of Health interest in the topic of ground water protection. She mentioned the well-known situation of a local business and the ABC (asphalt, brick and concrete) material which brought water protection to their attention. Other issues, including ones at the Transfer Station, have been taking up the Board's time and attention, until recently. Water Resource protection has been on their "radar" and they are wanting to bring it more to the forefront.

Pat Pajaron talked about nitrogen limitation in Zone 2. The Town is nitrogen sensitive and there are continuing discussions about how to proceed in this area.



Ms. Ridley asked if new BOH regulations that are being considered would be Town wide or only in Zone 2. Mr. Peters answered that they could be as extensive as the Town wishes.

Section 208 of the Clean Waters Act; DEP or EPA has directed the Cape Cod Commission to update the regional plan which hasn't been updated since the 1970's. Ms. Rose explained that they are looking into how to deal with non-conforming systems when there is financial hardship.

Mr. Silva spoke about building issues and water usage in the various areas and zones in town.

Mr. Riemer commented he didn't see any area on the maps where there is water for future needs.

Mr. Peters responded speaking about the complexity of the issues for the Town as well as the Seashore, including upgrading systems to Title V standards, and the phasing out of all cess pools. There has been discussion about tapping into the Barnstable County fund for no interest loans, or a Town fund.

Mr. Riemer thinks we should be more proactive, and consider that we might have to put in a sewage treatment plant at some point.

Bill Worthington said he knows the Town has been looking for water sources. Some well fields that have been found when pumped, lowered the wetlands.

Mr. Romanelli spoke about the work of the committee and agreed that it would be good to set up a meeting with the Planning Board. He said that they are working diligently to make a sewage plant unnecessary. As far as the map goes, we have a plethora of GIS information. He said that we should go with Weston and Sampson in revising the map. New regulations should be town-wide in order to be fair to all.

Mr. Riemer had a question about "hot spots" in possible proposals for new developments. Mr. Peters said that a subdivision would be on vacant land and to build you have to have potable water.

Ms. Ridley summarized key points by saying that BOH is taking up ground water protection regulations including nitrogen and other issues, for a town-wide regulation. An excellent suggestion was to utilize the data generated by Weston and Sampson, seeing whether changes to boundaries are needed. She wonders if we should touch base later regarding boundary issues, or put together a work group. There is an opportunity here for collaboration. She asked how we should continue this conversation. Should we put together a work group and bring back information gathered to the various Boards?

Mr. Peters and Mr. Silva spoke about more research and information gathering needed before a work group should be set up. Ms. Pajaron weighed in on other issues that need addressing first as well: Title V regulations, fertilizers, and other prohibited uses. Ms. Ridley suggested that the Boards reconvene in the first part of next year.

Ms. Rose said that Water Resources Committee has a Phase one report on the website. She recommends Planning Board members take a look at that. Mr. Sollog reiterated that we are concerned about the entire Town's water as well as Provincetown's and Wellfleet's.

Mr. Boleyn moved to adjourn the Planning Board meeting. Mr. Riemer seconded. So voted, 5-0. Ms. Rose called for a motion to adjourn the Board of Health meeting.

Meeting adjourned at 6:05 pm.

Respectfully submitted,

Katherine Blak

**TRURO PLANNING BOARD**  
**Meeting Minutes**  
**November 16, 2016— 6:00 pm**  
**Truro Town Hall**

**DRAFT**

Planning Board Members present: Bruce Boleyn, Peter Herridge, John Hopkins, Paul Kiernan, Jack Riemer, Steve Sollog. Excused absence: Michael Roderick

Other participants: Edward Pare, Attorney; Adam Wolfram; Susan Howe; Carole Ridley, Planning Consultant.

Mr. Sollog opened the meeting at 6:12 pm.

**Public Comment Period**

There was no public comment.

**Special Permit – Public Hearing**

**2016-012PB T-Mobile Northeast LLC** seeks an Eligible Facilities Request pursuant to Section 6409 of the Middle Class Tax Relief and Job Creation Act of 2012, and a Special Permit pursuant to §40.5 (Communication Structures, Buildings and Appurtenances) of the Truro Zoning By-law to allow for the replacement and collocation of wireless communications transmission equipment on an existing tower located behind the Public Safety Facility. The property is located at 344 Route 6, Atlas Map 39, Parcel 172A.

Edward Pare, Attorney for the applicant, T-Mobile, spoke about the updated plans the T-Mobile has provided and stated that the new installation will not substantially change the current T-Mobile presence on the tower. Mr. Sollog asked if they know that the tower has caused some problems in the past. Mr. Pare replied that they are replacing wiring at the same height and width as what has been there in the past. There were questions of the Board about the function of the cables. Mr. Sollog asked about the health and welfare of the workers who will do this work.

Mr. Pare stated that T-Mobile is at the lowest spot on the tower and they will follow all safety regulations during the installation process. Mr. Boleyn asked about an increase in noise. The response was that there will be no significant change. The replacement should take a couple of days to complete. Mr. Riemer asked about A-2, adding some additional arms, and if the weight of the equipment will be heavier. Mr. Pare said that T-Mobile is complying with code. T-mobile doesn't own the tower, they just lease space. There will also be a new cabinet which is not replacing an old cabinet.

Ms. Ridley suggested that it would be appropriate for the Planning Board to convey its concerns about the tower itself to the Board of Selectman. She also reminded the Board that there is a 60 day requirement for the Board to act on the T-Mobile application.

Mr. Hopkins asked how much Crown Castle, who owns the tower, pays the Town. He expressed concerns about the tower in general. He suggested that a representative of Crown Castle should be present for this hearing.

There was a discussion about the history of the tower and the lease agreement with the Town, as well as the tenant-landlord relationship. Mr. Kiernan talked about protecting the neighborhood. Every winter Truro has a series of storms, with up to 80 mph winds, which should require that the equipment have extra support. He asked that T-Mobile address the sound their equipment makes. Radiation and sound are issues. Mr. Pare stated that T-Mobile complies with all regulations.

There was a discussion about the areas of Truro that do not have adequate cell phone coverage. Mr. Pare suggested that an RFP could be issued by the Town.

Susan Howe asked how many customers of T-Mobile there are in Truro? Neither Mr. Pare nor Mr. Wolfram knew the answer.

Ms. Ridley recapped what was before the Board in this matter: three items. Does the application meet the test of eligible facilities request? If affirmative, does it qualify under the special status.

Remind the Board that there were a couple of items, that were not met by the owner. A letter to comply with....

Condition 3 and 4. Sprint shall take measurements and file with the Town.

Mr. Herridge made a motion to close the hearing, reading the six criteria under which an eligible facilities request must be granted (see below), Mr. Kiernan seconded, so voted, 5-1. Mr. Hopkins voted against.

The Truro Planning Board makes the following findings of fact that the proposed installation described in the application 2016-012PB T-Mobile Northeast LLC satisfies the criteria for determining an eligible facility that does not substantially change the physical dimension of the existing cell tower, as set forth under 47 U.S.C. §6409, and therefore is an eligible facility under the Act.

1. The modifications to the Transmission Equipment do not increase the height of the Tower by twenty feet or ten percent, whichever is greater.
2. The modifications to the Transmission Equipment do not protrude from the edge of the Tower by twenty feet or more than the width of the Tower (whichever of these two dimensions is greater) at the level where the transmission equipment modifications are made.
3. The modifications to the Transmission Equipment do not involve the installation of more than the standard number of equipment cabinets for the technology involved, not to exceed four.
4. The modifications to the Transmission Equipment do not entail any excavation or deployment outside of the Tower site.
5. The modifications to the Transmission Equipment do not defeat any existing concealment elements of the Tower.

6. The modifications to the Transmission Equipment comply with prior conditions of approval of the Tower, unless the non-compliance is due to an increase in height, increase in width or increase in depth.

The Board then considered the waivers to be granted. Mr. Sollog entertained a motion to grant the waivers, and ask the applicant to send a letter to Crown Castle regarding the Board's concerns.

Mr. Herridge made a motion to grant the following waiver based on a finding that granting the waiver would not result in any expense to the Town, would not be detrimental to the public interest, and would not be inconsistent with the purpose and intent of the Zoning Bylaw: § 40.5 B.17 - Pre-application meeting. Mr. Kiernan seconded. So voted, 5-1. (Mr. Hopkins voted against.)

Mr. Herridge made a motion to approve the second waiver, based on a finding that granting the waiver would not result in any expense to the Town, would not be detrimental to the public interest, and would not be inconsistent with the purpose and intent of the Zoning Bylaw § 40.5 B.19 – Specific written information. Mr. Kiernan seconded, 5-1 (Mr. Hopkins voted against).

Mr. Herridge made a motion to approve the third waiver, based on a finding that granting the waiver would not result in any expense to the Town, would not be detrimental to the public interest, and would not be inconsistent with the purpose and intent of the Zoning Bylaw § 40.5 B. 20 – Specific written information, seconded by Mr. Boleyn. So voted 5-1. (Mr. Hopkins voted against.)

Mr. Hopkins expressed his concerns regarding separating the tenant from the owner's responsibilities, wanting to hold both accountable.

Mr. Herridge moved to approve a Special Permit pursuant to section § 40.5 of the Town of Truro Zoning Bylaw for 2016-012PB T-Mobile Northeast LLC to allow for the replacement and collocation of wireless communications transmissions equipment on an existing tower located behind the Public Safety Facility located at 344 Route 6, Map 39, Parcel 172A, with the two conditions, one regarding figure A2, the bundling and capping of the co-ax cable if disconnected, that they be grounded and meet all electrical codes. The second condition is that a letter be sent by the applicant to Crown Castle, asking that they comply with Special Permit conditions 3 and 4 of the May 17, 2014 Planning Board decision. Mr. Kiernan seconded. So voted, 5-1. (Mr. Hopkins voted against.)

## **Discussion on Possible Zoning Articles**

### **§40.2 Affordable Accessory Dwelling Units**

Issues were discussed regarding the previous work on this revision. Mr. Hopkins mentioned that there are 200 of these units in Truro which are violating the law. Susan Howe said that she sees this bylaw as one which will allow people to make money seasonally, not necessarily



providing year round affordable housing. Mr. Sollog said that they want to require year round rentals. Ms. Howe said that we have lots of rules that are not being enforced. Why make new rules, when you are not carrying out the old rules?

Mr. Riemer would like to make the best use what's already on the ground in terms of accessory dwelling units. Discussion was held about structuring public input the way it was done for the Seashore District issue.

Ms. Ridley stated that if the Board decides to work with Town Counsel on a new draft, a public hearing would be held on the new proposed bylaw.

Ms. Ridley explained the difference between a non-discretionary permit and a "by right" permit. Mr. Hopkins said he doesn't think a special permit should be required. One approach might be "by right" if no construction is involved.

Ms. Ridley explained that amnesty allows those not in compliance to apply for a permit.

A suggestion was made to use the term "habitable" space not gross square footage. Parking spaces were discussed, and that the ADU would not be able to be placed for sale as a way of condo-izing.

The consensus of the Board was to send the current draft to Town Counsel to create a new revision. Mr. Kiernan abstained since he is new to the discussion.

### **§30.3 Seashore District**

Mr. Herridge said he thinks we should strike out design requirements. It was agreed that the Bylaw needs more work. There was a discussion of going town-wide with the size limitations instead of just for the Seashore.

### **§30.4 Water Resource Protection District**

Water Resource Protection was addressed earlier in the evening at the prior meeting with the Board of Health and the Water Resource Protection committee.

### **§10.4 Definitions**

A discussion of Definitions was held off until a future meeting.

### **Review and Approval of Meeting Minutes**

November 2, 2016 Planning Board Meeting

Mr. Herridge moved to approved the minutes of the November 2, 2016 Planning Board meeting, Mr. Boleyn seconded. So voted, 6-0.

### **Reports from Board Members and Staff**

Mr. Boleyn provided an article which was distributed. Ms. Ridley reminded the Board about their Town email accounts. She also asked the Board to look for an email which they

will receive to set up a site visit at 1 Noons Heights Road. She reminded the Board that Mr. Kiernan would not be eligible to discuss or vote on this application.

**Meeting Dates and Other Important Dates**

December 6, 2016 - Regular Meeting

December 21, 2016 (Wed.) - Regular Meeting

Mr. Herridge moved to adjourn, Mr. Boleyn seconded. So voted, 6-0. Meeting adjourned at 9:08 pm.

Respectfully submitted,

Katherine Black