



TOWN OF TRURO

P.O. Box 2030, Truro, MA 02666
Tel: (508) 349-7004, Ext. 27 Fax: (508) 349-5505

To: Planning Board
From: Carole Ridley, Consultant
Date: April 28, 2016
Re: Commercial Development Site Plan Review

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 By-law 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.

Application Description and Chronology

This application was submitted to Town Clerk on January 13, 2016. In accordance with 70.2, the Planning Board is required to hold a public hearing within 65 days. A letter was sent to the applicant on February 11, 2016 itemizing information required to complete the application. As a result, the applicant submitted a letter requesting a continuance on this matter to the Planning Board's May 3, 2016 meeting. A supplemental filing and revised site plan were submitted to the Town Clerk on April 11, 2016. The May 3rd public hearing was advertised and notice was sent to abutters. Following review of the revised plan, a letter itemizing required information was sent to the applicant on April 22, 2016. No additional information was subsequently filed by the applicant. As noted in the April 11, 2016 project narrative, this property is part of an ongoing Barnstable Superior Court Case, Richard Stevens Acting Building Commissioner of the Town of Truro et al v. Michael F. Winkler Trustee et al., Docket No. 1472CV00089. Attorney Jamie Veara, the Town's Counsel on this case, will attend the May 3, 2016 public hearing to answer any questions the Board may have regarding this court case and how it relates to the Site Plan Review application.

A Site Plan was approved for this property in 2009. The above referenced court case involves a complaint that the "the uses and physical state of the lot had changed impermissibly from what the Truro Planning Board had approved." (Notice of Zoning Violation, E. James Veara, February 28, 2014). In submitting this application the property owner seeks Board approval of a Site Plan to codify existing conditions and uses on the property, thereby addressing the concerns expressed in the Superior Court case.

In the April 11th project narrative, Attorney Zehnder states, "There are no new activities proposed. The instant application is intended to identify and approve site conditions for the purposes of compliance with the Town of Truro Regulations and resolution of the above referenced Superior Court matter." However, a review of the site plan indicates changes to the physical configuration of the site in comparison with the 2009 plan and existing conditions.

Completeness of Application

The following information has been submitted:

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 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, 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'

The project narrative includes written request for the following waivers:

- 70.3(D)1(e) 3 copies of drainage calculations
- 70.3(D)3(b)2 Parking and Walkways (existing conditions plan requirement)
- 70.3(D)3(b)2 Lighting Service Areas (existing conditions plan requirement)
- 70.3(D)3(b)2 Utilities (existing conditions plan requirement)
- 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

Additional Planning Staff Comments

An assessment of the requested waivers, and a listing of outstanding requests for information and/or clarification are described in the enclosed letters from Carole Ridley to Benjamin Zehnder, dated February 11, 2016 and April 22, 2016.

As described in the letters, much of the information for which waivers are requested could be necessary and useful to the Board in its review of the site plan application. In particular, the proposed changes in vegetation and the location of structures as compared with the 2009 plan and

with existing conditions indicate a need for submission of an existing conditions plan and a proposed conditions plan that meet the requirements of 70.3.D. A project estimate would be important for consideration of a 10% performance guarantee.

The Site Plan shows the boundary of Natural Heritage and Endangered Species Program jurisdiction, but information demonstrating that the proposed activities do not result in a take of state-listed species has not been provided. Any changes to the area within NHESP jurisdiction since the 2009 plan would require NHESP approval.

The property is within a Zone 2 to the public water supply, Paul Daley Well Field, and yet the Zone 2 is not shown on the Site Plan.

Other Town Staff Comments

Health & Conservation (see attached comments for detail):

- The entire parcel is within a Zone 2, and a portion of the parcel is within a 185 foot protective radius or Zone 1 for a well serving an abutting property. Building 8 & slab within this radius was to be removed.
- A proposed office building is shown on the 2009 plan and the submitted plan. The Title 5 septic system to serve this lot is within the Zone 1 noted above. There appears to be enough flow for office use, but a breakdown of design flow in a site and sewage plan is needed. No timeframe is provided for the new office structure.
- Storage of fuel oil or other hazardous material should be shown on the plan and BMPs for handling storage of these materials should be documented.

Police:

No concerns noted

Board Action

§70.3 Commercial Development (Subsections A, F and G are provided below):

A. Commercial Site Plan Review is required for:

- 1. Any construction, alteration, expansion, or modification of any properties, structures, and uses other than that of single or two family residences and their accessory uses and structures.*
- 2. All other projects specifically requiring site plan approval or review as stated in other sections of this Zoning Bylaw.*

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 site plan shows structures that do not comply with zoning.

- 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: An existing sand pile appears to have potential to encroach on the protective radius around a private well, and a 25-foot property line setback. An existing building and slab is located within the Zone 1 to the private well.

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: Information on lighting has not been provided and a waiver from this requirement has been requested based on the fact that no new lighting is proposed and the site is generally unlit. There is no information with which to judge this claim.

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

Note: The property overlays a NHESP habitat boundary. Information to document that the proposed activity will not result in a take has not been provided. The property is partially within a Zone 2 and this has not been shown on the plan.

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.*

Note: The property is not in a scenic viewing area, and no significant grading or soil removal is proposed.

6. *The proposal adequately provides for refuse disposal.*

Note: This issue has not been addressed in the application. It does not appear that refuse disposal needs of the site will change as a result of the proposed changes. There may be hazardous materials stored on the property and these should be shown and compliance with best management practices for storage of hazardous materials should be documented.

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

Note: Onsite sewage disposal is shown on the site plan.

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 has requested a waiver from drainage calculations based on the fact that the site is mostly left pervious. However, no information on drainage or stormwater management is available to confirm the adequacy of existing conditions.

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: Soil erosion has not been addressed, however no regrading or change in slope is proposed.

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: A waiver from the requirement for a landscape plan has been requested.

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: A waiver from the requirements for building plans has been requested. No information has been provided for the proposed office building, including a timeline for when it would be constructed.

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

Note: A waiver from the requirement to provide utility information has been requested

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

Note: It does not appear that the Site Plan would alter demand for town services such as water, police or fire department support.

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: No new curb cuts are proposed.

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: A waiver from the requirement to provide information about traffic and pedestrian circulation has been requested based on the argument that no changes are proposed. However existing traffic and pedestrian patterns have not been described in order for the Board to assess adequacy. Some structures yet to be relocated could alter parking as shown on the plan.

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

Note: This is not generally applicable given the site use.

Board Vote Options

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.

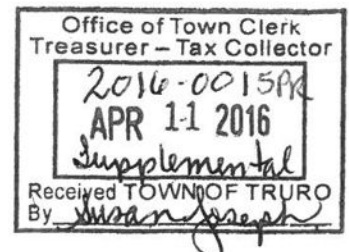
If the Board believes that more information is needed to make a determination on the application, it may vote to continue the public hearing to a date and time certain agreed to by the applicant.

If the Board is ready to make a decision, the following vote options are available:

Move to approve the Application for Commercial Development Site Plan Review for **2016-001SPR Winkler Route 6 Trust, Michael F. Winkler, Trustee** pursuant to §70.3 of the Truro Zoning By-law 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. This is based on the fact that the review criteria/design guidelines in §70.3.F have been satisfied.

Move to approve the Application for Commercial Development Site Plan Review for **2016-001SPR Winkler Route 6 Trust, Michael F. Winkler, Trustee** with conditions (*need to specify reasonable conditions*) pursuant to §70.3 of the Truro Zoning By-law 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. This is based on the fact that with the imposed conditions, the review criteria/design guidelines in §70.3.F have been satisfied.

Move to not approve the Application for Commercial Development Site Plan Review for Move to approve the Application for Commercial Development Site Plan Review for **2016-001SPR Winkler Route 6 Trust, Michael F. Winkler, Trustee** pursuant to §70.3 of the Truro Zoning By-law 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. Based on the finding that (*need to choose one of more of the following*) (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.



Commercial Development Site Plan Review
Project Narrative and Waiver Requests

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

April 11, 2016

Prepared by Benjamin E. Zehnder LLC

Applicant Winkler Route Six Trust, Michael F. Winkler, Trustee, is the owner of the parcel of real property located at 1 Noons Heights Road. The applicant submits the following narrative information and waiver requests in support of, and in connection with, its herewith-filed application for Commercial Development Site Plan Review, pursuant to Truro Zoning Bylaws §70.3.

Project Narrative:

Current Site Information and Use:

Locus is a 4.43± acre parcel of developed land located in the Town's Route 6 – General Business Zoning District and shown as on Assessor's Map 39, Parcel 166. The property is used for commercial and equipment and material storage purposes by a crane company, an excavation company, and a landscaping company. It is improved with eleven buildings as noted on the herewith filed plan dated April 11, 2016.

The property additionally is improved with the following non-building structures and/or equipment and materials, also as located on the herewith filed plan:

- concrete bins for materials storage
- float storage barges
- concrete retaining wall
- fuel tank and pad
- stone pile
- steel piles
- beam pile
- sand piles
- wood piles
- equipment storage areas

Easements and Legal Conditions:

- 1 -

Commercial Development Site Plan Review
Project Narrative and Waiver Requests
Winkler Route Six Trust
1 Noons Heights Road
Truro Assessor's Parcel ID 39-166

Locus has an appurtenant legal right of way of the 40' wide private way known as Noons Heights Road. It is subject to the conditions of the Planning Board's Site Plan Review decision of June 9, 2009 as noted on the endorsed plan entitled "Site Plan Showing Proposed Storage Building, 1 Noons Heights Road, Truro, MA, prepared for Michael Winkler, December 1, 2008, revised March 30, 2009, revised May 27, 2009, Scale: 1" = 40', East Cape Engineering." Locus is subject to an easement recorded with the Barnstable County Registry of Deeds at Book 6932, Page 142, which benefits the northerly abutter. This easement provides access over a portion of the property at locus, and also establishes a 185' protective radius from the abutting well.

There is currently an active Barnstable County Superior Court case regarding the use of locus, captioned Richard Stevens Acting Building Commissioner of the Town of Truro et al. v. Michael F. Winkler Trustee et al., Docket No. 1472CV00089. A copy of the Notice of Zoning Violation and Enforcement Action from that case, dated February 28, 2014 and recorded with Book 28007, Page 98, is being filed with this application.

Commercial Development Site Plan Review Proposal:

There are no new activities proposed. The instant application is intended to identify and approve site conditions for the purposes of compliance with Town of Truro Regulations and resolution of the above-referenced Superior Court matter.

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. There is no history of flooding or drainage concerns;
- > §§3(c)(1 - 16) – *Proposed Conditions Plan;*
Reason – The site plan reflects existing and proposed conditions.
- > §§3(d) – *Proposed Landscaping Plan;*
Reason - There are no proposed changes in Landscaping. Should the Planning Board request landscaping changes, the Applicant proposes to incorporate such into the Site Plan.
- > §§3(e) – *Building Plans;*
Reason – There are no proposed changes to the existing buildings. The "Proposed Office Building" was previously approved by the Planning Board.
- > §§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 generally throughout the site and is ample. There are no proposed walkways.

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

Reason – There are no proposed lighting changes and the site is generally unlit.

➤ §§3(b)(2) – *Utilities*

Reason – The property is served by existing utilities and no changes are anticipated.

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 where the applicant is not proposing any new conditions, building, or landscaping.

END



TOWN OF TRURO

P.O. Box 2030, Truro, MA 02666

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

Fax: (508) 349-5505

criddle@truro-ma.gov

Sent Via Email and USMail

April 22, 2016

Winkler Route 6 Trust, Michael F. Winkler
c/o Mr. Benjamin E. Zehnder
P.O. Box 2128
Orleans, MA 0253

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

Dear Mr. Zehnder:

The revised plan and supplemental materials submitted on April 11, 2016 have been reviewed against the requirements of §70.3.D as well as the items raised in my letter to you dated February 11, 2016 (shown in italics).

The revised narrative states: "There are no new activities proposed. The instant application is intended to identify and approve site conditions for the purposes of compliance with Town of Truro Regulations and resolution of the above-referenced Superior Court matter." However, the relocation of buildings and structures is proposed, and so the applicant seeks approval of proposed site conditions that vary from existing conditions and yet are not clearly shown on the revised plan. In addition, the following required information remains outstanding:

1. Storage bins encroaching on Route 6 shall be relocated in compliance with zoning setbacks.

It was requested that the relocated bins be shown on the revised plan. A notation on the revised plan indicates that the bins will be relocated in compliance with zoning, but does not indicate to where on the site they will be relocated, or when this will occur. The new location of the bins should be shown on a proposed conditions plan, and the timeframe should be specified.

2. Building 8 and slab shall be removed from the property.

It was requested that the relocated building and slab be shown on the revised plan. A notation on the revised plan indicates that the building and slab will be relocated in compliance with zoning, but does not indicate to where on the site they will be relocated. The new location of the building and slab should be shown on a proposed conditions plan, and the timeframe should be specified.

3. The sand pile on the northern side of the property noted on the plan for removal shall be removed.

Please indicate the measures that will be taken to ensure that the sand pile located on the property will not encroach on the setback to abutting property or the 185-foot protective radius to the adjacent property owner's well.

4. The natural vegetation area shown on the northern property boundary shall be accurately represented to reflect recent changes.

Natural vegetation is labeled on the revised plan but it is not indicated whether the vegetation is existing or proposed.

5. *Building 12 shall be relocated in compliance with zoning setbacks and shown on plan.*

In your letter dated March 29, 2016 you report that, "...Building 12 has been relocated as requested and will be shown on the revised plan." The new location of building 12 is not identified on the revised plan, nor is it listed on the table of buildings. Please clarify the status of building 12.

6. *A vehicle parking area on the northern side of building #3 shall be shown on the plan.*

Parking areas are shown on the revised plan, but it is not clear if these areas will be encroached on by relocated structures and bins.

7. *The applicant also shall provide a letter certifying that buildings #9 and #10 are not occupied for habitation.*

Your letter dated March 29th confirms this on Mr. Winkler's behalf.

8. Waiver Requests

The April 11th submission includes requests for waiver of several application information requirements. In my opinion, the waiver requests do not appear meet the standard under §70.3.E of the Truro Zoning Bylaw as follows:

- 1.e: *3 copies of drainage calculations* – There is no information about drainage or storm water management on the site, despite the proposed 10,124 sf of impervious surface area.
- 3.c: *Proposed conditions plan* – As stated I my February 11th letter, "...the site plan submitted contains existing and proposed elements (ie, office building). Moreover, you are encouraged to consider additional project elements that could assist the plan in meeting the Site Plan Review criteria and design guidelines outlined in §70.3.F (e.g., additional vegetative screening along the Noons Heights Road and the northern property boundary). For these reasons, a waiver request for §70.3.d.3.c is not advised and a revised submission should include both an existing and proposed conditions plan." Differentiation between existing and proposed conditions is difficult on the revised plan and would be more clearly represented on separate existing conditions and proposed conditions plans.
- 3.d: *Proposed landscaping plan* – This is recommended in order to determine consistency with §70.3.F.10
- 3.e: *Building plans* – A new structure (office building) is proposed and a plan for that structure should be provided
- 3.f: *Project estimates* – A cost estimate should be provide for the relocation of buildings, slabs and bins, and the erection of new structures, and any changes in vegetation.
- 3.b.2: *Parking and Walkways* – Information on parking as well as vehicular and pedestrian circulation is needed to demonstrate compliance with §70.3.F.15
- 3.b.2: *Lighting Service Areas* – Particularly given the relocation of structures, lighting information is needed to demonstrate compliance with §70.3.F.2 and F.3
- 3.b.2: *Utilities* – Relocation of buildings could necessitate changes to utilities on the site and this information is needed to demonstrate compliance with §70.3.F.12.

Further comment on the requested waivers is provided in my February 11th letter. Notwithstanding the foregoing, any waiver requests are made at the discretion of the Planning Board. Per section §70.3.E, the Board may grant waivers from information required under §70.3.D provided that "in the opinion of the Planning Board such a waiver would not be detrimental to the public interest, cause the town any expense, or be inconsistent with the intent and purpose of the bylaw." In its consideration of waivers the Board considers the value of each piece of information in relation to informing the Board's ability to evaluate the application against the requirements of the bylaw. Therefore, the Board expects that each

individual requested waiver shall be justified with a written explanation that is consistent with the criteria set forth in §70.3.E.

9. 70.3.D.3.a – General Requirements

- *3.a.2 – The zoning table does not provide information in a manner that allows for easy comparison of existing and proposed conditions with zoning requirements. This information should be provided in a single table with columns for existing, proposed/total and zoning bylaw requirements in like terms. Also, zoning information is needed for parking, setbacks, % lot coverage for parking, walkways and buildings, number of dwelling units (0 if none), and size and location of signs.*

The following information in the zoning table provided on the revised plan requires clarification:

- Proposed conditions in the table appear to relate to building 3, yet lot coverage of 6,480 sf does not match the larger square footage of 6,546, which is the product of 60.5 feet and 108.2 feet. The concrete slab does not appear to be accounted for in lot coverage. These numbers require clarification.
- The disposition of buildings 5, 6, 7, 8 and 11 needs to be clarified. What does temporary mean? If any of these buildings are to be relocated, to where and when, and if they are to be removed, when?
- What uses were used to calculate parking requirements, and how do these relate to the uses indicated in the Building Use column of the table. If *Commercial retail sales, retail or wholesale business services, barber shop, small engine repair, trade, repair shop, etc., and other customer services* was used as the basis of calculation, where is the 1,330 sf of retail space located? Alternately, if *Industrial or manufacturing use, including but not limited to landscaping, septic installation, contractor yards* was used as the basis of parking calculations, where is the retail space located, and why is display area not included in the calculation as required for the use category? The location of relocated buildings is important to determine whether the relocations would displace parking spaces.

10. Natural Heritage and Endangered Species Program Jurisdiction (§70.3.D.3.b.4)

The revised plan shows the boundary of NHESP PH 15. Please provide information regarding communications with NHESP to obtain a determination that the proposed activity does not constitute a take of state-listed species.

As you know, this application is scheduled for a public hearing on May 3rd at 6 pm. However, the information in the materials submitted to date is incomplete as itemized above. Please let me know how the additional information will be provided in order to ensure that the Board is able to review this application on May 3rd.

11. Zone 2 Delineation

A portion of the site appears to fall within the Zone 2 to the Paul Daley Well Field. Please add the Zone 2 delineation to the Site Plan, as there are restrictions associated with this designation that could affect the Board's consideration of the placement of structures or activities on the site.

If you have any questions or comments, please do not hesitate to contact me.

Sincerely,

A handwritten signature in cursive script that reads "Carole Ridley".

Carole Ridley
Planning Consultant to the Town

cc:

Jaime Veara, Esq. (via email)

Rae Ann Palmer (via email)

Russ Braun (via email)

Pat Pajaron (via email)

Fwd: Truro: Winkler Plan

Carole Ridley <cr@ridleyandassociates.com>

Thu 4/28/2016 10:18 AM

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

Begin forwarded message:

From: Laura Williams <lmw@zisson-veara.com>
Subject: Truro: Winkler Plan
Date: April 22, 2016 11:53:45 AM EDT
To: "cr@ridleyandassociates.com" <cr@ridleyandassociates.com>
Cc: "E. James Veara" <ejv@zisson-veara.com>

Carole,

I reviewed the draft of your April 22, 2016 letter to Attorney Ben Zehnder. As a minor point, I should point to the paragraph labeled "6". In that paragraph, I believe the phrase "it is not clear is these" should be instead "it is not clear if these."

Given the Planning Board's actions in the past, I suspect that some of the information recommended for the plan will be waived. On the other hand, the Planning Board may choose to require one additional item. In that respect, I should note that the Town of Truro Zoning Bylaw, Section 70, §70.3D.1.f. states: "Any other information that may be applicable or required by the Planning Board." Moreover, Section 70, §70.3D.3.c.4. provides the following:

Easements/Legal Conditions: Identification of legal encumbrance(s), including easements, that are related to the site's physical development, and a listing of any condition(s) placed upon the site by the Board of Appeals, Planning Board, Conservation Commission, Board of Health or any other public body or agency with the authority to place conditions on the site's development.

Part of the site falls within a Zoning II zone of contribution for the Paul Daley Wellfield. I know that the Provincetown Water Superintendent has concerns about the discovery of asphalt crushing at the property, and of course, that activity is not allowed within a Zone II. Because the Zone II area is subject to certain additional restrictions, because of their significance, and because the Zone II zone of contribution should appear on maps in both the Provincetown and Truro Town Halls, I recommend that the Planning Board requires that it be delineated on the site plan. There is no direct requirement, but the Board would certainly be acting within its authority to require the Zone II delineation on the site plan.

In all other respects, everything is fine. If, however, you have any questions, please feel free to contact me.

Jamie

EJV/lmw

Laura Williams

Paralegal

Zisson & Veara, P.C.

828 Main Street Box 2031

Dennis, MA 02638-0043

Tel: 508-385-6031

Fax: 508-385-6914

This e-mail message and any files transmitted with it contain PRIVILEGED and CONFIDENTIAL INFORMATION and are intended only for the person(s) to whom this e-mail message is addressed. As such, they are subject to attorney-client privilege and you are hereby notified that any dissemination or copying of this e-mail is strictly prohibited. If you have received this e-mail message in error, please notify the sender immediately by telephone or e-mail and destroy the original message without making a copy. Thank you.

MEMORANDUM

TO: Carole Ridley, Planning Consultant to the Town of Truro
Rae Ann Palmer, Town Administrator

FROM: Paul V. Benatti, Esq.

RE: Truro / Winkler

DATE: April 20, 2016

These comments relate to the "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. Except as noted, references to the bylaw refer to the "Town of Truro Zoning Bylaw," and that bylaw enables the Planning Board to waive the information an applicant is required to supply on a site plan. The Planning Board can also waive the substantive bylaw sections relating to parking and loading spaces. See § 30.9J. and § 70.3. In all other respects, the applicant must comply with the bylaw. § 70.1.B.

The site involved in this case lies inside the Route 6 General Business district, and there is ample frontage and lot area. The setback requirements for the front, side, and back are all 25 feet. In that respect, the concrete slab foundation for Building 8 lies within the front setback distance, but the plan bears the notation that the building and the slab will be removed. There is no indication when that will occur. Similarly, the plan shows a series of storage bins along the front lot line. The plan bears the notation that the storage bins will be "relocated in compliance with zoning setbacks." When this will occur and where the bins will be placed are not indicated on the plan. The new location for the storage bins may be important because of the uncertainty of where parking spaces will be located and how much area must be devoted to them. The storage bins, moreover, cannot lie within the 185 foot protective well radius because they would constitute a prohibited improvement within that area. The bylaw's definition for building, furthermore, is sufficiently broad to encompass those storage bins.

The site plan has several parking notations above the table for zoning compliance. Those lines disclose that the proposed use is "equipment service, repair and storage," but those terms do not fit easily within the use categories of the bylaw or within the categories used to prescribe parking spaces. For purposes of the number of parking spaces, Section 30.9 has numerous specifications, and virtually every one includes a specification for an employee and something else as well. The itemization on the site plan gives the number of spaces required for employees only. The Planning Board, of course, may feel that the number of parking spaces is more than adequate for the use this lot will have. According to the calculations, 10 spaces are required for the Winkler Crane employees, and 8 spaces are required for G.F.M. employees. The next line is unclear. It reads: "1330 SqFt. RETAIL SPACE AT 1 SPACE PER 150 SqFt. = 9 SqFt. REQUIRED." By looking below to find the area for each of the buildings on the plan, it is not possible to find any single

instance or combination that equals 1330 square feet. Moreover, the 9 square foot indication should probably be 9 spaces instead. The total number of parking spaces according to this calculation is 27.

Site plans should depict the location of parking spaces and the manner in which traffic will circulate within a lot; however, given the nature of this lot, the Planning Board may be willing to waive those requirements. Unless the Board is willing to waive numerous parking spaces, it would be useful to see where the storage bins will be located and where the parking spaces will be found.

In the "Zoning Compliance Schedules" table beneath the first table, the items in the "proposed" column refer only to Building 3. With respect to Building 3, lot coverage (building size, I assume) is given as 6480 square feet. In the chart beneath that chart, the Building 3 size is given as 6546, and that is the same number that appears printed in the building as it is depicted on the site plan itself. The discrepancy should be clarified. In the table beneath the first table, there is a listing of 11 buildings. Building 8 is labeled "SHED TO BE REMOVED," and Building 5, Building 6, and Building 7 are all labeled "TEMPORARY" – without any indication of when those temporary buildings will be removed. Building 7 lies only 18 feet back from the rear lot line. Moreover, it has not been shown on previous plans, including a plan dated as recently as 2014. Consequently, it is unlikely to qualify as a pre-existing nonconforming structure or as a structure that has been there so long that the limitations period has passed. Building 11 lies only 10 feet from a side lot line, and it is not described as temporary. Unless the applicant can show that it is a pre-existing nonconforming structure or that the limitations period has passed, that building will have to be moved or removed.

So far as the building chart is concerned, the area given for each building corresponds to what is inscribed on the plan itself. If the 3 temporary buildings and the shed to be removed are excluded from the calculations, the building area equals exactly 10,000 square feet. With the addition of the 3 temporary buildings, the total equals 10,475 square feet. If the shed to be removed is added, then the total is 10,621 square feet. In the preceding table, there is a total square footage given of 10,124 square feet. How that calculation was derived is uncertain, but it does not match any of the totals that are computed from the building table. Furthermore, some care will have to be taken with regard to the "SAND PILE" shown in the northwest portion of the site. The sandpile lies about 25 feet from the Cape View Motel property, and it strikes the 185 foot protective well radius shown on the plan.

Lying just outside the 185 foot protective well radius is something that has been labeled "PROPOSED OFFICE BUILDING T.O.F. = 106.0" – a building that may not have been constructed. I am not certain whether this building currently exists, but if it does not exist, then it should be removed from the plan. I should note that this building is not labeled with a number, and it does not appear in the chart listing the other 11 buildings on the site.

Near Building 3 is a rectangle that is labeled "TRAILER." In the bylaws, the use table has a series of footnotes. Some footnotes apply generally; some apply only to certain districts; and some apply only to certain uses within certain districts. Section 30.2's footnote 9 applies generally to exclude trailers. Because of the reformatting undertaken by the Cape Cod Commission, there is some ambiguity in the meaning and application of that exclusion, but the exclusion simply follows from

what was stated much more plainly before. In its previous form, the bylaw had a provision labeled Section IV A.1. That section concerned the residential district, but it was also incorporated into all other zoning districts. That provision read as follows: "Single family dwellings except trailers, mobile homes, Quonset huts or portable buildings." Except for one unoccupied home trailer or a home trailer used temporarily after a catastrophe, the current bylaws do not permit a trailer on a lot. Needless to say, if the applicant can show that this is a pre-existing nonconforming structure or that it has been in place beyond the statute of limitations, then the trailer may remain. Nevertheless, the trailer is not shown on previous plans, including one dated as late as 2014.

Although the Planning Board can waive certain provisions in the zoning bylaws, it has no authority to waive any provision of Truro's general bylaws. The "Town of Truro General Bylaws," Chapter IV, Section 3 presents a table which requires a lot having 27 spaces to designate at least 2 for handicapped parking. Because the spaces must be "designated" and identified, they should probably be shown on the site plan although there is no express requirement to that effect.

Although the bylaw requires the delineation of easements (such as the 185 foot protective well radius) and the Massachusetts Natural Heritage and Endangered Species Program (see NHESP on plan), one item that could affect future development is not shown on the plan. Part of this site lies within the Zone II zone of contribution to the Paul Daley Well Field. Most likely, that delineation would be very helpful to the applicant as well as the Planning Board.

The applicant has not asked for a waiver for all of the items missing from the plan. There is, for example, no "percent of lot coverage, broken down by parking, walkways, and building(s)." The Planning Board may have no interest in those missing features, and if it should approve a plan that does not have the explicitly waived items, then, by implication, the Planning Board will be deemed to have waived them, in any event.

As part of its site plan review, the Planning Board can require a full landscape plan, or the Planning Board can waive that requirement. Alternatively, the Planning Board can waive the requirement partially; that is, it could waive the plan except for the area lying within the 185 foot protective radius and along the side line that the lot shares with the Cape View Motel. Such a waiver or partial waiver is, of course, entirely the Board's decision.

The Building Commissioner's action was prompted by the presence of what was deemed to be manufacturing activity on this lot. The proposed use does not involve any processing or grinding of asphalt, brick, or concrete, and the "equipment service, repair, and storage" will not qualify as manufacturing. Nevertheless, because of concerns which arose before, I should mention that Massachusetts General Laws Chapter 111F, Section 11 begins as follows:

Every employer who manufactures, processes, uses or stores toxic or hazardous substances in the workplace shall provide a MSDS [material safety data sheet] for each product which is present in said workplace.

This requirement need not be part of site plan review, but it should be brought to the applicant's attention.



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: April 29, 2016

Re: Supplemental Information re: 2016-001SPR Winkler Route 6 Trust

This memo provides information supplemental to the May 3rd Board packet regarding the above referenced application.

This morning I received the attached memo from Attorney Jamie Veara regarding the implications of the location of this property within a Zone 2. In particular I would note the following passage from the communication:

Because all of the lot lies within a Zone II zone of contribution, the Planning Board will probably want the site plan to show all existing and proposed areas for the storage of petroleum products and hazardous substances, furnish the maximum volume of petroleum or hazardous substances present in each, and state whether any of the areas are existing storage areas, replacement storage areas, or new storage areas.

For your information, inserted below is Zoning Bylaw section 30.4 Water Resource Protection District. The applicant is not a prohibited use as defined in this bylaw, and there is no reference to above grade storage of hazardous materials. However, I thought it would be useful for you to review this in case of a question of its applicability in this case.

§ 30.4. Water Resource Protection District

A. Purpose. The purpose of the Water Resource Protection District is to protect public health by preventing the degradation of surface water and ground water utilized for public water supply.

B. Use Restrictions. The following uses are prohibited: junkyard, solid waste disposal, public sewage treatment facilities with on-site disposal of effluent unless tertiary treated, car washes, coin-op or commercial laundries, trucking or bus terminals, or airports. Subsurface hazardous chemical gasoline and oil storage in corrodible containers are prohibited.

C. Site Design Requirements

1. Runoff shall be directed toward vegetated swales or basins for surface infiltration. Catch basins and piped storm sewers shall be used only where other methods are infeasible.

2. Where the premises are partially outside the Water Resource Protection District, site design shall maximize protection of groundwater through siting potential pollution sources such as on-site disposal systems outside of the District, to the extent feasible.

D. Exemptions. The Board of Appeals may grant a special permit to exempt a use from the requirements of this section, provided that the applicant demonstrates that the proposed use at that location cannot adversely affect any developed or planned public water supply. Applications for such a special permit shall be referred to the Conservation Commission, Planning Board, and Board of Health for their review and comment prior to the conclusion of the Board of Appeals' hearing on the proposal.

cc:

Jaime Veara, Esq. (via email)

Rae Ann Palmer (via email)

Pat Pajaron (via email)

Russ Braun (via email)

Ben Zehnder, Esq. (via email)

Sue Belcher <sue@zisson-veara.com> 

April 29, 2016 10:13 AM

To: "Carole Ridley [cr@ridleyandassociates.com]" <cr@ridleyandassociates.com>

Cc: "Rae Ann Palmer (rpalmer@truro-ma.gov)" <rpalmer@truro-ma.gov>, "E. James Veara" <ejv@zisson-veara.com>

Truro: Winkler Plan

1 Attachment, 477 KB

Carole:

When I went through the materials you forwarded, I learned that the entire lot lies within a Zone II zone of contribution to a public well field. Previously, I was aware that most of the lot lay within a Zone II, but I did not know that every part of it did. With respect to the Zone II, I must note that activities are restricted through zoning and non-zoning bylaws and regulations and by the decisions rendered under them.

I have attached a copy of Title 310 of the Code of Massachusetts Regulations, Chapter 22, Section 22.21. Although there can be exceptions and variances, Section 22.21(2)(b)5. - see pages 4 and 5 of the attached - prescribe specific performance standards for any storage of petroleum within a Zone II. Replacements are excepted.

Because all of the lot lies within a Zone II zone of contribution, the Planning Board will probably want the site plan to show all existing and proposed areas for the storage of petroleum products and hazardous substances, furnish the maximum volume of petroleum or hazardous substances present in each, and state whether any of the areas are existing storage areas, replacement storage areas, or new storage areas.

For all other purposes, I believe the response you prepared is exhaustive and well presented.

I hope this email covers the last items, but certainly, if you have any questions, please feel free to contact me.

Jamie
EJV:sjb

Sue Belcher
Legal Assistant
Zisson & Veara, P.C.
828 Main Street
P.O. Box 2031
Dennis, MA 02638

Office: 508-385-6031
Fax: 508-385-6914

This e-mail message and any files transmitted with it contain PRIVILEGED and CONFIDENTIAL INFORMATION and are intended only for the person(s) to whom this e-mail message is addressed. As such, they are subject to attorney-client privilege and you are hereby notified that any dissemination or copying of this e-mail is strictly prohibited. If you have received this e-mail message in error, please notify the sender immediately by telephone or e-mail and destroy the original message without making a copy. Thank you.



[Truro-Winkl...pdf \(477 KB\)](#)

WESTLAW

Code of Massachusetts Regulations Currentness
 Title 310: Department of Environmental Protection
 Chapter 22.00: Drinking Water (Refs & Annos)
22.21: Groundwater Supply Protection
 310 MA ADC 22.21 CODE OF MASSACHUSETTS REGULATIONS (Approx. 15 pages)
 310 CMR 22.21

22.21: Groundwater Supply Protection

The following requirements shall apply to all persons to protect groundwater used as sources of public drinking water supply from contamination:

(1) Source Approval

(a) No public water supply well, wellfield, or spring shall be constructed, expanded or replaced, and no water supply well, wellfield, or spring shall be placed on-line in a public water system, without the prior written approval of the Department Persons seeking such approval are directed to follow the procedures set forth in the Drinking Water Program's *Guidelines and Policies for Public Water Systems*.

All requests for source approval, or approval of Zone II and III delineations, shall be submitted to the Department's Regional Office serving the area where the proposed well, wellfield, or spring is located.

In determining whether to grant such approval, the Department shall apply the criteria set forth in 310 CMR 22.21 and the *Guidelines and Policies for Public Water Systems*. Copies of the Guidelines and Policies for Public Water Systems are available for a nominal fee from the State Bookstore, State House, Room 116, Boston, Massachusetts and 436 Dwight Street Springfield, Massachusetts.

(b) No public water supply well or wellfield designed to withdraw, or spring which flows, less than 100,000 gallons per day shall be constructed, expanded or replaced, or placed on-line, unless the Department finds in writing:

1. that the proponent has satisfactorily complied with the Drinking Water Program's *Guidelines and Policies for Public Water Systems*;
2. that the source of water supply for the well, wellfield, or spring will achieve all applicable water quality standards set forth in the Massachusetts Drinking Water Regulations, 310 CMR 22.00;
3. that the proponent has properly determined the Zone I of the proposed well, wellfield, or spring;
4. that the Zone I of the proposed well, wellfield, or spring is owned or controlled by the supplier of water; and
5. that current and/or future land uses within the Zone I are limited to those directly related to the provision of public drinking water or will have no significant adverse impact on water quality.

In addition, the Department may require the proponent to delineate Zones II and III, and submit a groundwater monitoring well program plan for approval if the Department finds that existing or proposed land uses within the Interim Wellhead Protection Area of the proposed well, wellfield, or spring, determined in accordance with 310 CMR 22.21(1)(i), may pose a threat to water quality.

(c) No public water supply well, wellfield or spring designed to withdraw, or spring which flows, 100,000 gallons per day or more shall be constructed, expanded or replaced unless the Department finds in writing:

1. that the proponent has met all the requirements set forth in 310 CMR 22.21(1)(b) 1. through 5.;

2. that the proponent has properly delineated the Zones II and III of the proposed well, wellfield, or spring;

3. that the proponent has submitted a groundwater monitoring well program plan designed to evaluate the water quality impacts of land uses within the Zone II of the proposed well, wellfield, or spring; and

4. that the proponent has drafted wellhead protection zoning or nonzoning controls that prohibit siting within the Zone II the land uses set forth in 310 CMR 22.21(2)(a) and (b) unless designed in accordance with the performance standards specified in 310 CMR 22.00, and has complied with the nitrate management requirement of 310 CMR 22.21(2)(d).

(d) No public water supply well, wellfield or spring designed to withdraw, or spring which flows, 100,000 gallons per day or more shall be placed on-line unless:

1. a groundwater monitoring well program plan approved by the Department has been fully implemented (*i.e.* the monitoring wells are operational and the sampling frequency and parameters have been approved by the Department); and

2. the cities and towns in which any part of the Zone II of the proposed well, wellfield, or spring is located have wellhead protection zoning or nonzoning controls in effect that prohibit siting within the Zone II the land uses set forth in 310 CMR 22.21(2)(a) and (b) unless designed in accordance with the performance standards specified in 310 CMR 22.00. If the public water system is owned or controlled by an entity other than a municipality, the proponent must demonstrate to the Department's satisfaction that it has used its best efforts to have all cities and towns in which the Zone II is located establish such zoning or nonzoning controls.

(e) Notwithstanding 310 CMR 22.21(1)(d)2., no public water supply well, wellfield or spring designed to withdraw, or spring which flows, 100,000 gallons per day or more that will be used in a public water system owned or operated by a municipality, and is located within that municipality, shall be placed on-line unless the municipality has wellhead protection zoning or nonzoning controls in effect that prohibit siting within the Zone II the land uses set forth in 310 CMR 22.21(2)(a) and (b) unless designed in accordance with the performance standards specified therein. If the Zone II of a municipal public water system extends into another municipality, the water supplier must also demonstrate to the Department's satisfaction that it has used its best efforts to have all cities and towns into which the Zone II extends establish such zoning or nonzoning controls within the Zone II.

(f) Notwithstanding any other regulatory provision to the contrary, the Department may waive the requirement that the proponent of a public water supply well, wellfield, or spring delineate the Zone II, provided:

1. the proponent has properly delineated the Zone III;

2. each city and town in which the Zone III of the proposed well, wellfield, or spring is located has wellhead protection zoning or nonzoning controls in effect that prohibit within the Zone III the land uses set forth in 310 CMR 22.21(2)(a) and (b) unless designed in accordance with the performance standards specified in 310 CMR 22.00;

3. the proponent has submitted a groundwater monitoring well program plan designed to evaluate the water quality impacts of land uses within the Zone III of the proposed well, wellfield, or spring; and

4. the desired relief can be granted without substantial detriment to the public good.

In the event the Department waives the requirement that the proponent delineate the Zone II of a proposed public water supply well, wellfield, or spring, the supplier of water shall fully implement the groundwater monitoring well program plan approved by the Department before placing the well, wellfield, or spring on-line (*i.e.* the monitoring wells shall be operational and the sampling frequencies and parameters shall have been approved by the Department).

(g) In determining whether a proponent has properly determined the Zone I or delineated the Zones II or III of a well, wellfield, or spring, or adequately designed a groundwater monitoring well program plan, the Department shall apply the criteria set forth in the Drinking Water Program's *Guidelines and Policies for Public Water Systems*.

(h) Any person who receives Department approval for a public water supply well, wellfield or spring designed to withdraw, or spring which flows, 100,000 gallons per day or more that is not a replacement withdrawal point shall obtain a permit for any withdrawal, in accordance with the Water Management Act, M.G.L. c. 21G, and 310 CMR 36.00: *Massachusetts Water Resources Management Program*.

(i) If the Department has not approved the Zone II for a public water supply well, wellfield, or spring, the Department will utilize the Interim Wellhead Protection Area as defined in 310 CMR 22.02.

(j) The proponent may meet the requirements set forth in 310 CMR 22.21(1)(d)2. by demonstrating that existing rights in perpetuity or for a specific period of years stated in the form of a restriction, easement, covenant or condition in a deed or other instrument prohibit the siting of the land uses set forth in 310 CMR 22.21(2)(a) and (b) within the Zone II.

(k) The proponent may meet the requirements set forth in 310 CMR 22.21(1)(f)2. by demonstrating that existing rights in perpetuity or for a specific period of years stated in the form of a restriction, easement, covenant or condition in a deed or other instrument prohibit the siting of the land uses set forth in 310 CMR 22.21(2)(a) and (b) within the Zone III.

(l) No public water supply well, wellfield or spring designed to withdraw, or spring which flows, 100,000 gallons per day or more approved after the effective date of 310 CMR 22.21 shall remain on-line following the amendment or repeal of a wellhead protection zoning or nonzoning control pertinent to that well, wellfield, or spring, or the expiration of any such period of years stated in a deed or other instrument approved pursuant to 310 CMR 22.21(1)(j) or (k), unless the Department finds in writing that the supplier of water meets the requirements set forth in 310 CMR 22.21(1)(d) or (e), whichever is applicable, or grants a variance in accordance with 310 CMR 22.21(5). Any source of supply removed from service shall be maintained by the supplier of water as an emergency source of water supply unless the Department finds in writing that the source is not needed by the supplier of water for present or future water supply.

(m) Notwithstanding any other regulatory provision to the contrary, the Department may exempt a supplier of water from any of the requirements set forth in 310 CMR 22.21(1)(d) while a state of water emergency declared pursuant to M.G.L. c. 21G, § 15, is in effect. In the event that the Department grants such an exemption, the well, wellfield, or spring shall remain on-line only for the duration of the state of water emergency, as determined by the Department.

(2) Wellhead Protection Zoning and Nonzoning Controls

(a) Wellhead protection zoning and nonzoning controls submitted to the Department in accordance with 310 CMR 22.21(1), shall collectively prohibit the siting of the following land uses within the Zone II, or Zone III if the criteria of 310 CMR 22.21(1)(f) have been met, of the proposed well, wellfield, or spring, whichever is applicable:

1. landfills and open dumps, as defined in 310 CMR 19.006: *Definitions*;
2. landfills receiving only wastewater residuals and/or septage (wastewater residuals "monofills") approved by the Department pursuant to M.G.L. c. 21, § 26 through 53; M.G.L. c. 111, § 17; M.G.L. c. 83, §§ 6 and 7, and any regulations promulgated thereunder.
3. automobile graveyards and junkyard, as defined in M.G.L. c. 140B, § 1;
4. stockpiling and disposal of snow or ice removed from highways and streets located outside of Zone II that contains sodium chloride, chemically treated abrasives or other chemicals used for snow and ice removal;
5. petroleum, fuel oil and heating oil bulk stations and terminals, including, but not limited to, those listed under Standard Industrial Classification (SIC) Codes 5171 (not including liquified petroleum gas) and 5983. SIC Codes are established by the

U.S. Office of Management and Budget and may be determined by referring to the publication, *Standard Industrial Classification Manual*;

6. treatment or disposal works subject to 314 CMR 5.00: *Ground Water Discharge Permit Program* for wastewater other than sanitary sewage. This prohibition includes, but is not limited to, treatment or disposal works related to activities under the Standard Industrial Classification (SIC) Codes set forth in 310 CMR 15.004(6) (Title 5), except the following:

- a. the replacement or repair of an existing system(s) that will not result in a design capacity greater than the design capacity of the existing system(s); and
- b. treatment works approved by the Department designed for the treatment of contaminated ground or surface waters and operated in compliance with 314 CMR 5.05(3) or (13); and
- c. publicly owned treatment works, or POTWs.

7. facilities that generate, treat, store or dispose of hazardous waste that are subject to M.G.L. c. 21C and 310 CMR 30.000: *Hazardous Waste*, except for the following:

- a. very small quantity generators, as defined by 310 CMR 30.00: *Hazardous Waste*;
- b. household hazardous waste collection centers or events operated pursuant to 310 CMR 30.390: *Special Provisions for Accumulation of Household Hazardous Waste And/or Hazardous Waste Generated by Very Small Quantity Generators*;
- c. waste oil retention facilities required by M.G.L. c. 21, § 52A; and
- d. treatment works approved by the Department designed in accordance with 314 CMR 5.00: *Ground Water Discharge Permit Program* for the treatment of contaminated ground or surface waters.

8. any floor drainage systems in existing facilities, in industrial or commercial hazardous material and/or hazardous waste process areas or storage areas, which discharge to the ground without a DEP permit or authorization. Any existing facility with such a drainage system shall be required to either seal the floor drain (in accordance with the state plumbing code, 248 CMR 10.00: *Uniform State Plumbing Code*), connect the drain to a municipal sewer system (with all appropriate permits and pre-treatment), or connect the drain to a holding tank meeting the requirements of all appropriate DEP regulations and policies.

(b) Wellhead protection zoning and nonzoning controls submitted to the Department in accordance with 310 CMR 22.21(1), shall collectively prohibit the siting of the following and uses within the Zone II, or Zone III if the criteria of 310 CMR 22.21(1)(f) have been met, of the proposed well, wellfield, or spring, whichever is applicable, unless designed in accordance with the performance standards specified below in 310 CMR 22.21(2)(b) 1. through 7.:

1. storage of sludge and septage, as defined in 310 CMR 32.05: *Definitions*, unless such storage is in compliance with 310 CMR 32.30: *Requirements for Any Storage of Sludge or Septage* and 32.31: *Additional Requirements for Long-term Storage of Sludge or Septage*;
2. storage of sodium chloride, chemically treated abrasives or other chemicals used for the removal of ice and snow on roads, unless such storage is within a structure designed to prevent the generation and escape of contaminated runoff or leachate;
3. storage of commercial fertilizers, as defined in M.G.L. c. 128, § 64, unless such storage is within a structure designed to prevent the generation and escape of contaminated runoff or leachate;
4. storage of animal manures, unless such storage is within a structure designed to prevent the generation and escape of contaminated runoff and leachate;
5. storage of liquid hazardous materials, as defined in M.G.L. c. 21E, and/or liquid petroleum products unless such storage is:

- a. above ground level;
- b. on an impervious surface; and
- c. either:

(i) in container(s) or above-ground tank(s) within a building; or

(ii) outdoors in covered container(s) or above-ground tank(s) in an area that has a containment system designed and operated to hold either 10% of the total possible storage capacity of all containers, or 110% of the largest container's storage capacity, whichever is greater;

however, these storage requirements shall not apply to the replacement of existing tanks or systems for the keeping, dispensing or storing of gasoline provided the replacement is performed in a manner consistent with state and local requirements.

6. the removal of soil, loam, sand, gravel or any other mineral substances within four feet of the historical high groundwater table elevation (as determined from monitoring wells and historical water table fluctuation data compiled by the United States Geological Survey), unless the substances removed are redeposited within 45 days of removal on site to achieve a final grading greater than four feet above the historical high water mark, and except for excavations for the construction of building foundations or the installation of utility works, or wetland restoration work conducted in accordance with a valid Order of Condition issued pursuant to M.G.L. c. 131, § 40;

7. and land uses that result in the rendering impervious of more than 15% or 2500 square feet of any lot or parcel, whichever is greater, unless a system for artificial recharge of precipitation is provided that will not result in the degradation of groundwater quality.

(c) The proponent shall give written notice to the Department of any and all local by-laws, ordinances, rules and regulations that allow for the grant of a variance, waiver or exemption from any of the wellhead protection zoning or nonzoning controls submitted to the Department for approval in accordance with 310 CMR 22.21 before placing the proposed well, wellfield, or spring on-line.

(d) The Department may require as part of the Source Approval process requirements of 310 CMR 22.21(1)(c), the completion of a nitrogen loading analysis for the new well, wellfield, or spring's Zone II. A nitrogen loading analysis shall be required when, in the Department's judgement, the type and level of land use within the Zone II or other information reasonably indicates that nitrate concentrations in the well, wellfield, or spring may or will exceed five mg/l nitrate.

Public water systems required by their Water Management Act M.G.L. c. 21G permits issued under 310 CMR 36.00: *Massachusetts Water Resources Management Program* to define Zone IIs and implement land use controls shall be required to conduct a nitrate loading analysis as part of the Zone II delineation for well, wellfield, or springs that have exceeded five mg/l nitrate.

Public water systems whose required nitrate loading analysis predicts >five mg/l nitrate or whose well, wellfield, or spring has exceeded five mg/l nitrate must prepare a nitrate management plan, subject to the Department's approval, which seeks to maintain nitrate levels below five mg/l for the subject well in the long-term.

(3) Requirements for all New and Existing Groundwater Sources

(a) Sources for Community Systems. Any person who obtains Department approval for a community public water system that relies entirely upon groundwater sources shall provide additional wells, wellfield, or springs and pumping equipment, or the equivalent, capable of producing the same volumes and quality of water as the system's primary well, wellfield, or spring at all times, or shall provide the storage capacity equivalent to the demand of at least two average days if approved by the Department, unless an interconnection with another public water system has been provided which can adequately provide the quantity and quality of water needed.

(b) Zone 1. All suppliers of water shall acquire ownership or control of sufficient land around wells, infiltration galleries, springs and similar sources of ground water used as sources for drinking water to protect the water from contamination. This requirement shall generally be deemed to have been met if all land within Zone I is under the

ownership or control of the supplier of water. Current and future land uses within the Zone I shall be limited to those land uses directly related to the provision of the public water system or to other land uses which the public water system has demonstrated have no significant impact on water quality. The Department may require greater distances or permit lesser distances than the Zone I distances set forth at 310 CMR 22.02, if the Department deems such action necessary or sufficient to protect public health. No new underground storage tanks for petroleum products shall be located within Zone I.

(4) Inspection and Enforcement

(a) Each supplier of water shall annually survey the land uses within Zones I, II and III, or within the Interim Wellhead Protection Area, for each well and wellfield under its control.

(b) A supplier of water shall submit to the Department an annual report that identifies for each well and wellfield under its ownership and control the presence of new land uses within the Zones I, II and III, or within the Interim Wellhead Protection Area, that could adversely impact water quality. The annual reports shall be submitted on Department approved forms by January 31st for the preceding calendar year. The annual reports shall be submitted to the Department's Office of Water Supply at the Regional Office that serves the area where the well, wellfield, or spring is located.

(c) A supplier of water shall notify the local board of health or health department within 48 hours of detection of any violation of a statutory or regulatory requirement that may adversely effect its water supply or distribution system, and shall notify the inspector of buildings, building commissioners or local inspector, or the person charged with enforcement of local zoning and nonzoning controls, within 48 hours of detecting any violation of applicable land use restrictions that may adversely effect its water supply or distribution system. Such notices should include the following information:

1. the name of the person in violation;
2. the location where the violation is occurring;
3. the date when the violation was observed;
4. a description of the violation;
5. the legal citation of the requirement or restriction violated; and
6. a description of the actions necessary to remove or remedy the violation and the deadlines for taking such actions.

In addition, the supplier of water shall notify the Department's Office of Water Supply at the appropriate Regional Office upon giving any notice required by 310 CMR 22.21(4)(c).

(d) A supplier of water shall take appropriate action to determine whether the violation has been removed or remedied and shall notify the Department's Office of Water Supply at the appropriate Regional Office upon finding that the violation has been removed or remedied.

(5) Variances

(a) The Department may grant a variance from the requirements of 310 CMR 22.21(1) (e) to a proponent that, despite its best efforts, is unable to adopt one or more of the requirements set forth in 310 CMR 22.21(2)(a) and (b) if the Department finds that strict compliance with such requirements would result in an undue hardship and would not serve to further the intent of 310 CMR 22.21.

(b) The Department shall consider the following factors in making the finding necessary to grant a variance pursuant to 310 CMR 22.21(5) :

1. the reasonableness of available alternatives to the proposed well, wellfield, or spring;
2. the overall effectiveness of existing land use controls and other protective measures on the proposed well, wellfield, or spring and any other water supply sources used by the supplier of water;

3. the nature and extent of the risk of contamination to the proposed well, wellfield, or spring that would result from the granting of the variance; and
4. whether the variance is necessary to accommodate an overriding community, regional, state or national public interest.

These factors need not be weighed equally, nor must all of these factors be present for the Department to grant a variance. The presence of any single factor may be sufficient for the granting of a variance.

(c) A variance granted pursuant to 310 CMR 22.21(5) shall be conditioned on such monitoring or other requirements as the Department may prescribe.

(d) Requests for variances shall be made in writing and clearly state the provision or requirement from which the variance is sought and the reasons and facts that support the granting of a variance, and shall include an evaluation of the reasonableness of alternatives to the proposed well, wellfield, or spring.

(e) Within 14 days of filing a request for variance under 310 CMR 22.21(5)(a), the person filing the request shall notify persons served by the supplier of water by direct mail and by publication on not less than three consecutive days in a newspaper of general circulation in the service area of the supplier of water. The notice shall include:

1. the provision or requirements from which the variance is being sought;
2. the identity of the proponent of the well, wellfield, or spring;
3. the identity of the person requesting the variance, the address where a copy of the request for variance will be available for public inspection, and the times it will be available; and
4. a statement that the Department will receive written comments concerning the request from the public for a 30 day period commencing on the last date of newspaper publication.

(f) Each person submitting a request for variance shall submit to the Department a copy of the public notice required by 310 CMR 22.21(5)(e) and affidavits attesting to the fact that the notices have been given. The Department will receive written comments concerning the request from the public for a 30 day period commencing on the last date of newspaper publication.

(g) Within 30 days of the close of the comment period, each person requesting a variance under 310 CMR 22.21(5)(a) shall respond in writing to all reasonable public comments received by the Department

(h) The Department may schedule a public hearing on any request for variance submitted in accordance with 310 CMR 22.21(5) if it determines on the basis of the public comments received that such a hearing is in the public interest. In the event that the Department schedules a hearing, the person filing the request shall notify persons served by the supplier of water of the hearing by publication on not less than three consecutive days in a newspaper of general circulation in the service area of the supplier of water. In addition, the person filing the request shall notify each person who submitted written comment concerning the request to the Department by direct mail. The person filing the request shall submit to the Department a copy of the public notices required by 310 CMR 22.21(5)(h), and an affidavit attesting to the fact that the notices have been given, prior to the hearing. Persons filing a request for a variance under 310 CMR 22.21(5) shall pay the full the cost of all notifications and public hearing scheduled.

(i) Within 30 days of the grant of a variance under 310 CMR 22.21(5), any person that receives a variance shall notify persons served by the supplier of water of the granting of the variance, including any conditions imposed by the Department, by direct mail and by publication on not less than three consecutive days in a newspaper of general circulation in the service area of the supplier of water. The person that receives the variance shall submit to the Department a copy of the public notices and an affidavit attesting to the fact that the notices have been given upon completion of the public notification.

Currency of the Update: April 8, 2016.

Mass. Regs. Code tit. 310, § 22.21, 310 MA ADC 22.21

End of Document

© 2016 Thomson Reuters. No claim to original U.S. Government Works

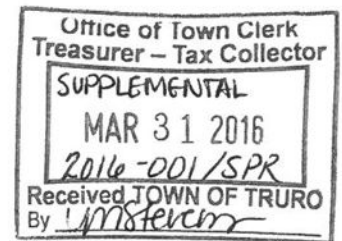
Westlaw. © 2016 Thomson Reuters | Privacy Statement | Accessibility | Supplier Terms | Contact Us | 1-800-REF-ATTY (1-800-733-2889) | Improve Westlaw



THOMSON REUTERS

Benjamin E. Zehnder LLC

177 Route 6A
Orleans, Massachusetts 02653



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

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

March 29, 2016

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

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

Dear Ms. Ridley:

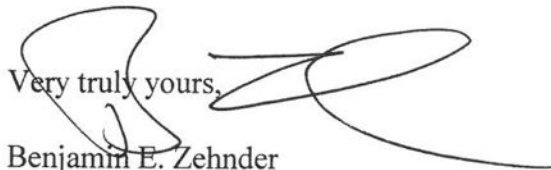
This will respond to your correspondence dated February 11, 2016. Firstly, this correspondence constitutes a request for continuance of the above matter to the Planning Board's May 3, 2016 meeting date, and a consent to tolling of the constructive grant time frames to a date 30 days following that re-scheduled meeting date.

Secondly, I anticipate filing a revised plan and waiver requests shortly, and in all events they will be filed at least seven days prior to the hearing date. I can report that Building #12 has been relocated as requested and will be shown on the revised plan. Building #8 and slab will be removed prior to the hearing date, as will the sand pile on the northern side of the property.

I have also been authorized by Mr. Winkler to represent to the Board that Buildings # 9 and 10 as shown on the previously filed plan are not occupied for habitation.

I will submit a further revised status letter with the filing of the revised site plan and waiver requests.

Thank you for your attention.

Very truly yours,

Benjamin E. Zehnder

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



TOWN OF TRURO

P.O. Box 2030, Truro, MA 02666

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

Fax: (508) 349-5505

criddle@truro-ma.gov

Sent Via Email and USMail

February 11, 2016

Winkler Route 6 Trust, Michael F. Winkler
c/o Mr. Benjamin E. Zehnder
P.O. Box 2128
Orleans, MA 0253

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

Dear Mr. Zehnder:

The purpose of this letter is to itemize information requirements necessary to complete the above referenced application submitted on January 13, 2016 so that it may be considered for scheduling of a public hearing by the Planning Board.

As noted in the application, the property is the subject of an active Barnstable County Superior Court Case (Richard Stevens Acting Building Commissioner of the Town of Truro et al v. Michael F. Winkler Trustee et al.). It is my understanding that as part of ongoing discussions between the Town and applicant, several modifications to the current use of the property have been identified as requiring immediate action. Moreover, any application for Site Plan Review must be able to demonstrate compliance with applicable zoning. Therefore, the items listed below must be acted on and reflected on a revised existing conditions plan prior to consideration of this application by the Planning Board.

Changes agreed to at the December 23 site visit:

1. Storage bins encroaching on Route 6 shall be relocated in compliance with zoning setbacks;
2. Building 8 and slab shall be removed from the property;
3. The sand pile on the northern side of the property noted on the plan for removal shall be removed.

Additional modifications to reflect current conditions and demonstrate conformance with zoning:

4. The natural vegetation area shown on the northern property boundary shall be accurately represented to reflect recent changes;
5. Building 12 shall be relocated in compliance with zoning setbacks and shown on plan;
6. A vehicle parking area on the northern side of building #3 shall be shown on the plan.

The applicant also shall provide a letter certifying that buildings #9 and #10 are not occupied for habitation.

In addition, the following comments are provided based on my review of the application and the requirements of §70.3.D of the Truro Zoning Bylaws. The following items were identified for requested waivers:

- 1.e: 3 copies of drainage calculations
- 3.c: Proposed conditions plan
- 3.d: Proposed landscaping plan
- 3.e: Building plans
- 3.f: Project estimates
- 3.b.2: Parking and Walkways
- 3.b.2: Lighting Service Areas
- 3.b.2: Utilities

Per section §70.3.E, the Board may grant waivers from information required under §70.3.D provided that “in the opinion of the Planning Board such a waiver would not be detrimental to the public interest, cause the town any expense, or be inconsistent with the intent and purpose of the bylaw.” In its consideration of waivers the Board considers the value of each piece of information in relation to informing the Board’s ability to evaluate the application against the requirements of the bylaw. Therefore, the Board expects that each individual requested waiver shall be justified with a written explanation that is consistent with the criteria set forth in §70.3.E. The information submitted with the application in support of the does not meet this standard.

It is also noted that the site plan submitted contains existing and proposed elements (ie, office building). Moreover, you are encouraged to consider additional project elements that could assist the plan in meeting the Site Plan Review criteria and design guidelines outlined in §70.3.F (e.g., additional vegetative screening along the Noons Heights Road and the northern property boundary). For these reasons, a waiver request for §70.3.d.3.c is not advised and a revised submission should include both an existing and proposed conditions plan. Additional comments on other waiver requests are referred to in the comments noted below.

3.a – General Requirements

- 3.a.2 – The zoning table does not provide information in a manner that allows for easy comparison of existing and proposed conditions with zoning requirements. This information should be provided in a single table with columns for existing, proposed/total and zoning bylaw requirements in like terms. Also, zoning information is needed for parking, setbacks, % lot coverage for parking, walkways and buildings, number of dwelling units (0 if none), and size and location of signs.
- 3.a.6 legend of all symbols is required

3.b – Existing - Conditions Plan

- 3.b.1 - Total area and dimensions conforming to Barnstable County Registry of Deeds requirements is required
- 3.b.2 – Location, including property setbacks, is needed for all buildings and elements including parking, driveways, walkways, lighting service areas, utilities, drainage and easements (the latter are described in the application but should be shown on the plan). A table should be provided on the existing conditions plan that lists each building and provides the square footage area by story, height, existing use and proposed use for each building.
- 3.b.4 tree symbols are not indicated by a legend. All wetlands resource areas of jurisdiction, NHESP jurisdiction, or National Flood Insurance Program jurisdiction should be indicated on the plan, even if to indicate non-applicability.
- Any storage of oil, fuel or other hazardous material should be shown in detail on the plan
- Existing signs should be clearly shown on the plan

3.c – Proposed Conditions Plan

Notwithstanding the waiver request, for the reasons cited above, a proposed conditions plan should be provided addressing all elements of 70.3.D.3.c. Please note that drawings, elevations and floor plans for the proposed office building should be provided per 3.c.1.

3.d – Proposed Landscape Plan

Notwithstanding the waiver request, and in consideration of the potential for additional vegetated screening to ameliorate impacts to adjacent properties along Noons Heights Road and the northern property line, submission of a landscape plan is strongly advised.

3.e – Building Plans

As noted under 3.c above, drawings, elevations and floor plans for the proposed office building should be provided.

3.f – Project Estimate

The applicant should be prepared to address a possible condition under §70.3.I for a performance guaranty of up to 10 percent of project cost.

The applicant is strongly advised to review §70.3.E Review Criteria and Design Standards and be prepared to demonstrate the plan's compliance with each condition set forth in that section, as applicable.

Given the extent of additional information required, the earliest possible date for a hearing on this matter is Tuesday, March 29, 2016 at 6:00pm. In order to meet this hearing date, any new or additional information must be filed with the Town Clerk (with the requisite number of copies) no later than Monday, February 22. Anything filed after that date may delay the scheduling of the public hearing.

Recognizing that March 29th falls after the 65-day period of action, please submit a letter requesting an extension for action on this application.

If you have any questions or comments, please do not hesitate to contact me.

Sincerely,



Carole Ridley
Planning Consultant to the Town

cc:

Jaime Veara, Esq. (via email)
Rae Ann Palmer (via email)
Russ Braun (via email)
Pat Pajaron (via email)

ZISSON & VEARA, P.C.

ATTORNEYS AT LAW
828 MAIN STREET
DENNIS, MASSACHUSETTS 02638
TELEPHONE (508) 385-6031
FAX (508) 385-6914

MAILING ADDRESS: P.O. BOX 2031, DENNIS, MA 02638-0043

E. JAMES VEARA
PAUL V. BENATTI
CHRISTOPHER A. VEARA

RICHARD L. ZISSON
(1942-2006)

EDWARD E. VEARA
RETIRED

February 9, 2016

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

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

Dear Carole:

Your draft to Attorney Zehnder is a comprehensive review and an excellent letter. Russell Braun made a good suggestion, and it could be incorporated into the draft.

I have three minor corrections for the text. Two are on page 2. Under the subheading "3.b -- Existing -- Conditions Plan," the first line has the phrase "dimensions confirming to." I believe "confirming" should be "conforming." In the next-to-last line on that page, there is a reference to 70.D.3.c. I believe that citation should be 70.3.D.3.c. Finally, on page 3, "March 29, 2015" should be corrected to "March 29, 2016."

With this letter, I have sent along copies of six statutes taken from Massachusetts General Laws Chapter 111F. The most significant are Section 11 and Section 15. If the Town Administrator designates the Fire Chief or the Health Agent as the "municipal coordinator (see Section 1), he or she can request a copy of the material safety data sheets (Sections 1 and 16) that are mandated whenever an employer "manufactures, processes, uses or stores toxic or hazardous

ZISSON & VEARA, P.C.

Ltr Ridley
February 9, 2016
Page 2

substances in the workplace.” See Section 11. Although these requirements lie outside site plan review, they are independently mandated, and contemporaneous compliance can be exacted. Note, however, that these statutes are not triggered unless the workplace is the site for an item on the Department of Public Health Commissioner’s substance list. See Section 4.

I hope this response covers everything. If it does not or if you have any questions about it, please feel free to contact me.

Cordially,

A handwritten signature in black ink, appearing to read 'E. Veara', with a large, stylized initial 'E' on the left.

E. James Veara

PVB/lmw

Ecc:

Russell Braun
Rae Ann Palmer
Pat Pajaron

WESTLAW

Massachusetts General Laws Annotated
Part I. Administration of the Government (Ch. 1-182)
Title XVI. Public Health (Ch. 111-114)
§ 1. Definitions
Chapter 111F, Hazardous Substances Disclosure by Employers (Refs & Annots)
Massachusetts General Laws Annotated Part I, Administration of the Government (Ch. 1-182) Effective: July 1, 2003 (Approved: 3 pages)

Effective: July 1, 2003

M.G.L.A. 111F § 1

§ 1. Definitions

Currentness

In this chapter, the following words shall have the following meanings:--

"Article", a finished product or manufactured item: (1) which is formed to a specific shape or design during manufacture, (2) which has end use function(s) dependent in whole or in part upon its shape or design during end use, and (3) which has either no change of chemical composition during its end use or only those changes of composition which have no commercial purpose separate from that of the article, except that fluids and particles are not considered articles regardless of shape or design unless inert or totally encapsulated.

"CAS number", the identification number assigned by the Chemical Abstracts Service to specific chemical substances.

"Chemical name", the scientific designation of a substance in accordance with the nomenclature system developed by the International Union of Pure and Applied Chemistry or the system developed by the Chemical Abstracts Service.

"Common name", any designation or identification such as code name, code number, trade name, or brand name used to identify a substance other than by its chemical name.

"Community resident", any resident of a municipality in which an employer manufactures, processes, uses or stores toxic or hazardous substances as defined in this section.

"Container", any receptacle or formed or flexible covering for the storage or transport of toxic or hazardous substances including but not limited to a bag, barrel, bottle, box, can, carton, cylinder, drum, pipe, storage tank, both mobile and stationary, vessel or vat.

"DEP", the department of environmental protection.

"DOL", the department of labor.

"DPH", the department of public health.

"Designated representative", an employee's treating physician upon written authorization by said employee, and the employee's collective bargaining agent who is certified, or is recognized by the employer of the employee without regard to written employee authorization. No other individual or organization shall be eligible to serve as a designated representative.

"Employee", any person employed on or after the effective date of this chapter who is, has been, or may be exposed under normal operating conditions or foreseeable emergencies to any toxic or hazardous substance in a workplace. In the case of a deceased or legally incapacitated employee, the employee's spouse, guardian or executor may exercise all the employee's rights under this chapter. For purposes of this chapter, any person whose employment is terminated for any reason after the effective date of this chapter is an employee.

"Employer", any person, firm, corporation, partnership, association or other entity engaged in a business or in providing services, including the commonwealth and any of its political subdivisions, that manufactures, processes, uses or stores toxic or hazardous substances, but not including the employment of domestic workers or casual laborers employed at the place of residence of the employer. Independent contractors shall be deemed the sole employer of their employees, even when said employees are performing work at the workplace of another employer as defined herein.

"Expose" or "exposure", any situation arising from or related to the work operation of an employer where an employee or a community resident may ingest, inhale, absorb through the skin or eyes or otherwise come into contact with a toxic or hazardous substance.

"Impurity", a toxic or hazardous substance which is unintentionally present with another substance or mixture.

"Label", the written, printed and graphic information displayed on or affixed to the container of a toxic or hazardous substance; or the placards, signs, or operating instructions which communicate the information required by section seven herein.

"Manufacturer", a person who produces, synthesizes, extracts, or otherwise makes a toxic or hazardous substance.

"Massachusetts substance list", a compilation of toxic or hazardous substances which are to be subject to the provisions of this chapter.

"Material safety data sheet" or "MSDS", the written document which sets forth the following information for a toxic or hazardous substance:

(a) The chemical name, any common names, and the CAS number of the toxic or hazardous substance.

(b) The hazards or other risks in the use of the toxic or hazardous substance, including:

(1) the potential for fire, explosion, corrosivity, and reactivity;

(2) the acute and chronic health effects of risks from exposure; including the medical conditions that might be aggravated by exposure; and

(3) the potential routes of exposure and symptoms of overexposure.

(c) The proper precautions, handling practices, necessary personal protective equipment, and other safety precautions in the use of or exposure to the toxic or hazardous substances, including appropriate emergency treatment in case of overexposure at hazardous levels.

(d) The emergency procedures for spills, fire, disposal and first aid.

(e) A description in lay terms, of the specific potential health risks posed by the toxic or hazardous substance intended to alert any person reading this information, including but not limited to carcinogenic, mutagenic, teratogenic, or neurotoxic effects, for substances so designated on the Massachusetts substance list, pursuant to section four (c) of this chapter.

(f) The month and year that the information was compiled and the name, address, and emergency telephone number of the manufacturer responsible for preparing the information.

"Medical emergency", a serious medical condition which poses an imminent threat to a person's health, caused or suspected to have been caused, by accidental exposure to a toxic or hazardous substance, and which requires immediate treatment by a physician.

"Mixture", any solution or intimate admixture of two or more substances, at least one of which is present as a toxic or hazardous substance, as designated pursuant to section four, which do not react chemically with each other.

"Municipal coordinator", the fire chief or fire commissioner, or the public health commissioner or public health officer of a city or town as designated by the chief municipal officer of said city or town; provided, however, that in towns, the board of selectmen may designate one of its members, or may appoint any qualified resident of the town to act as municipal coordinator. For the purposes of this chapter, chief municipal officer shall mean in a city, the mayor; in a Plan D or Plan E government, the city or town manager; in a town, the board of selectmen.

"NFPA Code", the color and number system identifying the category and degree of fire hazard of a substance as adopted by the National Fire Protection Association in "Standard System For the Identification of Fire Hazards of Materials", NFPA 704 in effect on the effective date of this chapter, and as amended from time to time thereafter.

"Research laboratory", a workplace or a work area of a workplace used primarily for research, development, nonroutine testing or experimentation activity in which toxic or hazardous substances are used by or under the direct supervision of a technically qualified individual. Provided, however, that a research laboratory shall not be involved in the production or manufacture of goods for direct commercial sale.

"Technically qualified individual", a person who, because of education, training, or experience, understands the health risk associated with the toxic or hazardous substance or mixture handled by or under his or her supervision, and is familiar with the personal protective procedures to be followed in the use or handling of such substances.

"Trade secret", any formula, pattern, device, or compilation of information which is used in an employer's or manufacturer's business, and which gives said employer or manufacturer an opportunity to obtain an advantage over competitors who do not know or use it.

"Toxic or hazardous substance", any chemical substance or mixture of substances in a gaseous, liquid or solid state which is listed in the Massachusetts substance list compiled in compliance with the provisions of section four, and which is manufactured, processed, used or stored in the workplace, but which shall not include alcoholic beverages as defined in section one of chapter one hundred and thirty-eight, or articles intended for personal consumption by employees in the workplace, or consumer articles packaged for distribution to, and used by, the general public, or articles sold or used in retail food establishments and all other retail trade establishments, exclusive of articles used in processing and repair areas, or substances being transported in interstate commerce.

"Work area", a room or defined space in a workplace where toxic or hazardous substances are produced, used and where employees are present in the course of their employment.

"Workplace", an establishment or business of an employer at one geographic location at which work is performed and containing one or more work areas, but not including a police station or public armory in which ammunition is stored. In the case of the commonwealth or any of its political subdivisions acting as an employer, the workplace shall be defined as all work areas wholly owned or controlled by the commonwealth or said subdivisions; in the case of an independent contractor, the workplace shall be defined as all work areas wholly owned or controlled by said independent contractor; provided however, that employees of the commonwealth, or any of its political subdivisions, or an independent contractor shall have certain rights to examine MSDS's as provided in section eleven (f).

Credits

Added by St.1983, c. 470, § 1. Amended by St.1986, c. 43; St.1990, c. 177, §§ 189, 190; St.1996, c. 151, § 263; St.2003, c. 26, § 574, eff. July 1, 2003.

M.G.L.A. 111F § 1, MA ST 111F § 1

Current through Chapter 171 of the 2015 1st Annual Session and Chapter 20 of the 2016 2nd Annual Session

End of Document © 2016 Thomson Reuters. No claim to original U.S. Government Works

WESTLAW

Massachusetts General Laws Annotated

Part I. Administration of the Government (Ch. 1-182)

Title XVI. Public Health (Ch. 111-114)

§ 4. Substance list; amendment procedures; concentration requirements for toxic or hazardous substances; disse...
Massachusetts General Laws Annotated Chapter 111. Hazardous Substances Disclosure by Employers (Revs & Annos)
Part I. Administration of the Government (Ch. 1-182) (Approx. 3 pages)

M.G.L.A. 111F § 4

§ 4. Substance list; amendment procedures; concentration requirements
for toxic or hazardous substances; dissemination of information

Currentness

(a) For the purpose of this chapter, the commissioner of DPH shall establish the Massachusetts substance list and make said list available to manufacturers, employers, municipal coordinators, and the commissioners of DOL and DEP. Substances on the list may be designated by their chemical name or common name(s), and CAS number. Only those substances specifically enumerated on the list shall be subject to the provisions of this chapter, and no articles as defined in section one shall be included on the list. The commissioner of DPH shall prepare and amend the list according to the following procedures, and shall promulgate said list pursuant to the rulemaking provisions of chapter thirty A on an annual basis. The annual list shall become effective ninety days after its promulgation. In the case of substances which are extraordinarily hazardous and a threat to public health, the commissioner of DPH may promulgate emergency amendments to the list according to the laws of the commonwealth, provided that appropriate procedures for amending the list, as specified in this section, are followed.

(b) The list shall consist initially of all chemical substances enumerated in any of the following designated source lists, exclusive of generic categories:

1. Environmental Protection Agency
Restricted Use Pesticides - 40 CFR 162.30
2. International Agency for Research on Cancer (Sublist: "Substances found to have at least sufficient evidence of carcinogenicity in animals")
3. National Toxicology Program
List of chemicals published in the *Annual Report on Carcinogens*
4. Occupational Safety and Health Administration Toxic and Hazardous Substances - 29 CFR 1910, Subpart Z
5. National Institute for Occupational Safety and Health/Occupational Safety and Health Administration *Occupational Health Guidelines for Chemical Hazards*
6. American Conference of Governmental Industrial Hygienists
Threshold Limit Value for Chemical Substances and Physical Agents in the Workplace
7. National Fire Protection Association
Hazardous Chemicals Data (NFPA 49)
8. National Fire Protection Association
Fire Hazard Properties of Flammable Liquids, Gases, Volatile Solids (NFPA 325 M)
(All items rated II through IV as health hazards or III through IV as flammability or reactivity hazards.)
9. Environmental Protection Agency
Carcinogen Assessment Group's List of Carcinogens
10. National Cancer Institute
(Substances that meet the NTP criteria for significant carcinogenic effect.)

(c) The commissioner, in promulgating the Massachusetts substance list and its amendments shall designate on said list any substance which is a carcinogen, mutagen, teratogen, or neurotoxin, based on a preponderance of substantial and valid scientific evidence.

(d) For the purposes of this chapter, a toxic or hazardous substance is present in any mixture if it is one per cent or more of the mixture or two per cent if the toxic or hazardous substance exists as an impurity in the mixture; provided, however, that the commissioner of DPH may, by regulation, raise the concentration requirement for a toxic or hazardous substance which he or she finds is not toxic or hazardous at the threshold levels; and may lower the concentration requirement for a toxic or hazardous substance including carcinogens, mutagens, teratogens, and neurotoxins for which there is valid and substantial scientific evidence that the substance is extraordinarily hazardous.

The manufacturer of a toxic or hazardous substance shall notify the commissioner of DPH of any valid evidence which indicates either: that the concentration requirement for a toxic or hazardous substance is higher than what is necessary to protect employees who work with, or may be exposed to, the substance; or that the concentration levels should be lowered because there is valid and substantial evidence that the substance is extraordinarily hazardous.

The provisions of this chapter shall not apply to impurities which develop as intermediate materials during chemical processing but are not present in the final mixture, and to which employee or community resident exposure is unlikely.

(e) The commissioner of DPH shall amend the Massachusetts Substance List by adding, in place of the generic categories excluded pursuant to subsection (b) of this section, those specific toxic or hazardous substances which fall within said generic categories and which, in his judgment, should be subjected to the provisions of this act. Provided that such amendment shall be made only after opportunity has been provided for public comment and hearing pursuant to the rulemaking provisions of chapter thirty A and upon the commissioner's finding that according to the preponderance of the evidence, substantial and valid scientific evidence exists that any substances added pursuant to this subsection may result in an acute or chronic risk to human health or safety.

(f) Any substance added to or deleted from the source lists designated in subsection (b) of this section by the agency responsible for preparing and amending said list shall be added to, or deleted from, the Massachusetts substance list as part of its annual amendment by the commissioner of DPH.

(g) Further amendments to the Massachusetts substance list may be established by the commissioner of DPH, pursuant to the following process:

The commissioner shall publish a notice of intent to add a substance to the Massachusetts substance list. This notice shall identify the proposed substance and shall inform interested persons of their right to request a proceeding pursuant to this section. Any person showing that he may be substantially and specifically affected by the proposed addition to the substance list may file a request for such hearing provided that such request is filed in writing with the commissioner within thirty days of the date that the notice was published.

Upon receipt of a request for a hearing, the commissioner shall set a hearing date. Reasonable notice of the hearing shall be afforded all persons requesting a hearing and shall include statements of the time and place of the hearing. Parties shall have sufficient notice of the issues involved to afford them reasonable opportunity to prepare evidence and argument.

The commissioner shall allow any other interested person to participate by presentation of argument orally or in writing, or for any other limited purpose, as the agency may order.

Unless otherwise provided by law, the commissioner, or his hearing officer, need not observe the rules of evidence observed by courts, but shall observe the rules of privilege recognized by law. Evidence may be admitted and given probative effect only if it is the kind of evidence on which reasonable persons are accustomed to rely in the conduct of serious affairs. The commissioner may exclude unduly repetitious evidence.

Every party shall have the right to call and examine witnesses, to introduce exhibits, and to submit rebuttal evidence. Cross-examination shall not be allowed.

All evidence, including any records, investigation reports, and documents in the possession of the agency of which it desires to avail itself as evidence in making a decision, shall be offered and made a part of the record in the proceeding, and no other factual information or evidence shall be considered. Documentary evidence may be received in evidence in the form of copies or excerpts, or by incorporation by reference.

The commissioner shall make available an official record, which shall include testimony and exhibits, and which may be in narrative form, but need not arrange to transcribe shorthand notes or sound recordings unless requested by a party. If so requested, the commissioner may, unless otherwise provided by any law, require the party to pay the reasonable costs of the transcript before the agency makes the transcript available to the party.

A decision to place a substance on the list pursuant to this subsection, must be based upon the commissioner's finding that according to the preponderance of the evidence, substantial and valid scientific evidence exists that the substance poses an acute or chronic risk to human health or safety. The commissioner's decision shall be in writing or stated in the record. The decision shall be accompanied by a statement of reasons for the decision, including determination of each issue of fact or law necessary to the decision. Parties to the proceeding shall be notified in person or by mail of the decision, of their right to appeal the decision to the Superior court and the time limits on their right to appeal. A copy of the decision and of the statement of reasons shall be delivered or mailed upon request to each party and to his attorney of record.

Any person aggrieved by the decision of the commissioner may appeal such decision to the Superior court for Suffolk county. The standards for review shall be in accordance with the standards provided in section fourteen of chapter thirty A.

(h) Substances not present on the Massachusetts substance list established pursuant to this section shall not be subject to the provisions of this chapter.

(i) The commissioner of DPH shall be responsible for the dissemination of all information available on the nature and hazards of toxic or hazardous substances, from the chemical substances information networks of the federal environmental protection agency, the health hazard evaluation program of the national institute of occupational safety and health and any and all other information sources. DPH shall promptly assist employers, employees, community residents, municipal coordinators and state personnel with inquiries concerning the toxic or hazardous nature of such substances. DPH shall assist DLI in its responsibilities with respect to preparing or obtaining MSDS information pursuant to section nine (b).

Credits

Added by St.1983, c. 470, § 1. Amended by St.1990, c. 177, § 192; St.1996, c. 151, § 265.

M.G.L.A. 111F § 4, MA ST 111F § 4

Current through Chapter 171 of the 2015 1st Annual Session and Chapter 20 of the 2016 2nd Annual Session

End of Document © 2016 Thomson Reuters. No claim to original U.S. Government Works.

WESTLAW

Massachusetts General Laws Annotated

Part I. Administration of the Government (Ch. 1-182)

Title XVI. Public Health (Ch. 111-114)

§ 11. Material safety data sheets; employers' duties; employee's right to examine
Chapter 111F. Hazardous Substances Disclosure by Employers (Refs & Annos)
Massachusetts General Laws Annotated Part I. Administration of the Government (Ch. 1-182) (All 2016 2 pages)

M.G.L.A. 111F § 11

§ 11. Material safety data sheets; employers' duties; employee's right to examine

Currentness

(a) Every employer who manufactures, processes, uses or stores toxic or hazardous substances in the workplace shall provide a MSDS for each product which is present in said workplace. All MSDS's shall be available at a central location in the workplace.

(b) A completed federal OSHA Form 20 material safety data sheet shall constitute prima facie evidence of compliance with the requirements of this chapter relative to material safety data sheets, provided that said form includes a description of the acute and chronic health risks associated with exposure to the substance described.

(c) Any employee or his designated representative, may request in writing and shall have the right to examine and obtain the MSDS's for the toxic or hazardous substances to which he is, has been or may be exposed. The employer shall provide the MSDS within four working days, subject to the provisions of section nine (b). The employer may adopt reasonable procedures for acting upon such requests to avoid interruption of normal work operations.

(d) If an employee who has requested an MSDS pursuant to this section has not received said MSDS within four working days subject to the provisions of section nine (b), that employee may refuse to work with the substance for which he has requested the MSDS, until said MSDS is provided. Provided, however, that nothing contained herein shall be construed to permit any employee of the commonwealth or any of its political subdivisions to refuse to perform essential services.

(e) Every employer who manufactures, processes, uses or stores toxic or hazardous substances in the workplace shall post a notice in a central location in the workplace informing employees of their rights under this section.

(f) For the purposes of this section and section fourteen, an independent contractor, or the commonwealth or any of its political subdivisions shall maintain MSDS's for their own workplaces only, as defined in section one; provided, however, that employees of such employers, insofar as they are exposed in the course of their employment to toxic or hazardous substances in other workplaces, shall have the right to examine MSDS's for those substances to which they are exposed from the workplace employer through a written request to their own employer.

Credits

Added by St.1983, c. 470, § 1.

M.G.L.A. 111F § 11, MA ST 111F § 11

Current through Chapter 171 of the 2015 1st Annual Session and Chapter 20 of the 2016 2nd Annual Session

End of Document © 2016 Thomson Reuters. No claim to original U.S. Government Works.

WESTLAW

Massachusetts General Laws Annotated
Part I. Administration of the Government (Ch. 1-182)
Title XVI. Public Health (Ch. 111-114)
§ 15. Instruction on nature and effects of toxic or hazardous substances to employees
Chapter 111F. Hazardous Substances Disclosure by Employers (Reps & Annos)
Massachusetts General Laws Annotated Part I. Administration of the Government (Ch. 1-182) (111F:15, 2 pages)

M.G.L.A. 111F § 15

§ 15. Instruction on nature and effects of toxic or hazardous substances to employees

Currentness

Employers shall furnish employees with instruction on the nature and effects of those hazardous substances present in the workplace either in written form or in training programs as may be appropriate. Such instruction shall be in nontechnical language but may be generic to the extent appropriate and related to the job. Such instruction shall include the chemical name and any common names, unless withheld from an MSDS as a trade secret, of the toxic or hazardous substance to which an employee may be exposed under normal operating conditions, the location of the substance in the workplace, appropriate first aid treatment and antidotes in the event of improper exposure or overexposure, the proper and safe handling of said substance, the health effects of said substance as described in the relevant MSDS, and the rights and duties of employees as set forth in this chapter. Employers shall provide their current employees with instruction as described herein within ninety days of the effective date of this chapter and annually thereafter, and for employees hired thereafter, within the first month of employment, and annually thereafter.

Credits

Added by St.1983, c. 470, § 1.

M.G.L.A. 111F § 15, MA ST 111F § 15

Current through Chapter 171 of the 2015 1st Annual Session and Chapter 20 of the 2016 2nd Annual Session

End of Document © 2016 Thomson Reuters. No claim to original U.S. Government Works.

WESTLAW

Massachusetts General Laws Annotated
Part I. Administration of the Government (Ch. 1-182)
Title XVI. Public Health (Ch. 111-114)

§ 16. Material safety data sheets; filing copies
Chapter 111F, Hazardous Substances Disclosure by Employers (Refs & Annos)
Massachusetts General Laws Annotated Part I. Administration of the Government (Ch. 1-182) (Approx. 2 pages)

M.G.L.A. 111F § 16

§ 16. Material safety data sheets; filing copies

Currentness

Every employer subject to the provisions of this chapter shall file with the regional office of DEP for the region in which the workplace of the employer is located, and upon request with the municipal coordinator for the city or town in which the workplace of the employer is located, a copy of an MSDS for each toxic or hazardous substance listed on the Massachusetts substance list and present in the employer's workplace. The municipal coordinator shall retain said MSDS's for at least five years and the regional office of DEP shall retain said MSDS's for forty years.

Credits

Added by St.1983, c. 470, § 1. Amended by St.1990, c. 177, § 196.

M.G.L.A. 111F § 16, MA ST 111F § 16

Current through Chapter 171 of the 2015 1st Annual Session and Chapter 20 of the 2016 2nd Annual Session

End of Document © 2016 Thomson Reuters. No claim to original U.S. Government Works.

WESTLAW

Massachusetts General Laws Annotated
 Part I. Administration of the Government (Ch. 1-182)
 Title XVI. Public Health (Ch. 111-114)
 Chapter 111F. Hazardous Substances Disclosure by Employers (Refs & Annos)
 § 19. Material safety data sheets; release to municipal officials
 Massachusetts General Laws Annotated Part I. Administration of the Government (Ch. 1-182) (Approx. 2 pages)

M.G.L.A. 111F § 19

§ 19. Material safety data sheets; release to municipal officials

Currentness

A municipal coordinator who has obtained an MSDS from an employer pursuant to section sixteen may make available to another municipal official for the city or town in which the workplace of the employer is located, a copy of an MSDS, if he determines that an imminent threat to public health or safety exists for which immediate access to information contained in the MSDS is critical to that other municipal official's performance of a duty imposed by statute, regulation, ordinance, or by-law. The municipal coordinator shall so inform the employer of the release of the MSDS to another municipal official.

Credits

Added by SL1983, c. 470, § 1.

M.G.L.A. 111F § 19, MA ST 111F § 19

Current through Chapter 171 of the 2015 1st Annual Session and Chapter 20 of the 2016 2nd Annual Session

End of Document © 2016 Thomson Reuters. No claim to original U.S. Government Works.



Town of Truro Planning Board

P.O. Box 2030, Truro, MA 02666

COMMERCIAL DEVELOPMENT APPLICATION FOR SITE PLAN REVIEW

Date January 13, 2016

To the Town Clerk and the Planning Board of the Town of Truro, MA

The undersigned hereby files an application with the Truro Planning Board for the following:

- Site Plan Review** pursuant to §70.3 of the Truro Zoning By-law (Complete I, II & III)
- Waiver of Site Plan Review** pursuant to §70.9 of the Truro Zoning By-law (Complete I & III)

I. General Information

Description of Property and Proposed Project Applicant is seeking Site Plan Review and approval 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. Please see attached narrative for complete description and proposal.

Property Address 1 Noons Heights Road Map(s) and Parcel(s) 39-166

Registry of Deeds title reference: Book 17926, Page 238, or Certificate of Title Number N/A and Land Ct. Lot # N/A and Plan # N/A

Applicant's Name Winkler Route Six Trust, Michael F. Winkler, Trustee

Applicant's Legal Mailing Address P.O. Box 1110, Truro, MA 02666

Applicant's Phone(s), Fax and Email (508) 487-3366; (508) 737-4696; winklercrane@aol.com

Applicant is one of the following: (please check appropriate box)

- Owner Prospective Buyer* Other* *Written Permission of the owner is required for submittal of this application.

Owner's Name and Address same

Representative's Name and Address Benjamin E. Zehnder; P.O. Box 2128, Orleans, MA 02653


Representative's Phone(s), Fax and Email (508) 255-7766; (508) 255-6649; bzezhnder@zehnderllc.com

II. Waiver(s) Request – Waivers from any of the items listed in §70.3.D, must be identified below and a separate sheet shall be attached indicating in detail the reason for said waiver(s) pursuant to §70.3.D. *Note that items 1(a-d), 2 and 3.a (1 – 6) of §70.3.D shall not be waived.*

- 1.e: 3 copies of drainage calculations
- 3.b: Existing Conditions Plan (specific waiver requests and reason must be attached)
- 3.c: Proposed Conditions Plan (specific waiver requests and reason must be attached)
- 3.d: Proposed Landscaping Plan (specific waiver requests and reason must be attached)

III. Signature(s)


Applicant(s)/Representative Signature

 - 1/13/15
Owner(s) Signature or written permission

Your signature on this application authorizes the Members of the Planning Board and town staff to visit and enter upon the subject property.

Commercial Development Site Plan Review
Project Narrative and Waiver Requests

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

January 13, 2016

Prepared by Benjamin E. Zehnder LLC

Applicant Winkler Route Six Trust, Michael F. Winkler, Trustee, is the owner of the parcel of real property located at 1 Noons Heights Road. The applicant submits the following narrative information and waiver requests in support of, and in connection with, its herewith-filed application for Commercial Development Site Plan Review, pursuant to Truro Zoning Bylaws §70.3.

Project Narrative:

Current Site Information and Use:

Locus is a 4.43± acre parcel of developed land located in the Town's Route 6 – General Business Zoning District and shown as on Assessor's Map 39, Parcel 166. The property is used for commercial and equipment and material storage purposes by a crane company, an excavation company, and a landscaping company. It is improved with the following buildings, as located on the herewith filed plan:

Building #1:	1-story / 13' height / 993 s.f.
Building #2:	1-story / 15' height / 1,465 s.f.
Building #3:	29' high / 6,546 s.f.
Building #4:	(as shown on plan)
Building #5:	(as shown on plan)
Building #6:	(as shown on plan)
Building #7:	(as shown on plan)
Building #8:	(as shown on plan)
Building #9:	1-story / 13' height / 200 s.f.
Building #10:	1-story / 13' height / 299 s.f.
Building #11:	1-story / 11' height / 250 s.f.
Building #12:	1-story / 11' height / 68 s.f.

The property additionally is improved with the following non-building structures and/or equipment and materials, also as located on the herewith filed plan:

- concrete bins for materials storage
- float storage barges
- concrete retaining wall
- fuel tank and pad
- stone pile
- steel piles
- beam pile
- sand piles
- wood piles
- equipment storage areas

Easements and Legal Conditions:

Locus has an appurtenant legal right of way of the 40' wide private way known as Noons Heights Road. It is subject to the conditions of the Planning Board's Site Plan Review decision of June 9, 2009 as noted on the endorsed plan entitled "Site Plan Showing Proposed Storage Building, 1 Noons Heights Road, Truro, MA, prepared for Michael Winkler, December 1, 2008, revised March 30, 2009, revised May 27, 2009, Scale: 1" = 40', East Cape Engineering." Locus is subject to an easement recorded with the Barnstable County Registry of Deeds at Book 6932, Page 142, which benefits the northerly abutter. This easement provides access over a portion of the property at locus, and also establishes a 185' protective radius from the abutting well.

There is currently an active Barnstable County Superior Court case regarding the use of locus, captioned Richard Stevens Acting Building Commissioner of the Town of Truro et al. v. Michael F. Winkler Trustee et al., Docket No. 1472CV00089. A copy of the Notice of Zoning Violation and Enforcement Action from that case, dated February 28, 2014 and recorded with Book 28007, Page 98, is being filed with this application.

Commercial Development Site Plan Review Proposal:

There are no new activities proposed. The instant application is intended to identify and approve site conditions for the purposes of compliance with Town of Truro Regulations and resolution of the above-referenced Superior Court matter.

Waiver Requests:

The applicant 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;

- §§3(c)(1 - 16) – *Proposed Conditions Plan*;
- §§3(d) – *Proposed Landscaping Plan*;
- §§3(e) – *Building Plans*;
- §§3(f) – *Project Estimates*.
- §§3(b)(2) – *Parking and Walkways*.
- §§3(b)(2) – *Lighting Service Areas*
- §§3(b)(2) – *Utilities*

As reasons for these waiver requests, applicant states that it seeks to memorialize the existing site conditions by the current application and any resulting approval granted. The applicant is not proposing any physical or use change at locus (other than removal of sand pile and structures within well radius in northeast corner or property as noted on the plan), and therefore cannot depict any proposed conditions, landscaping, or buildings on plan, nor provide any estimate of the project. Parking is provided generally throughout the developed areas of the site and is therefore not delineated. All lighting is located and directed within the property lines and therefore not shown. Utilities are provided directly from Route 6 and are not shown. Waiver of drainage calculations is requested since the site is primarily unimproved sandy soil providing direct drainage.

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 where the applicant is not proposing any new conditions, building, or landscaping.

Key: 1290

Town of TRURO - Fiscal Year 2016

8/19/2015 9:51 am SEQ #: 1,284

CURRENT OWNER		LOCATION		PARCEL ID		CLASS		CLASS%		DESCRIPTION		BN ID	BN	CARD
WINKLER ROUTE SIX TRUST		1 NOONS HGTS RD		39-166-0		3250		100		SMALL RETAIL		1	1	1 of 3
TRS: WINKLER MICHAEL F		TRANSFER HISTORY		DOS		T		SALE PRICE		BK-PG (Cert)				
PO BOX 1110		WINKLER ROUTE SIX TRUST		11/14/2003		QS		750,000		17926-238				
TRURO, MA 02666-1110		NOONS PAULAA		02/13/1998		J				11224-147				
		NOONS DONALD W & PAULAA		11/30/1992		A				8330-254				
CD	T	AC/SF/JUN	Nbhd	Int1	Int2	Int3	Lpl	VC	CREDIT AMT	ADJ VALUE				
103	S	33,750	RT6	1.00	1.00	1.00	C02	1.00		248,750				
203	A	0,775	RT6	1.00	1.00	1.00	C02	1.00		49,600				
303	A	2,880	RT6	1.00	1.00	1.00	C02	1.00		63,360				
TOTAL		4.430 Acres		ZONING		FRNT		0						

ASSESSED	CURRENT	PREVIOUS
LAND	361,700	355,700
BUILDING	133,200	132,000
DETACHED	8,800	8,800
OTHER	407,800	396,300
TOTAL	911,500	892,800

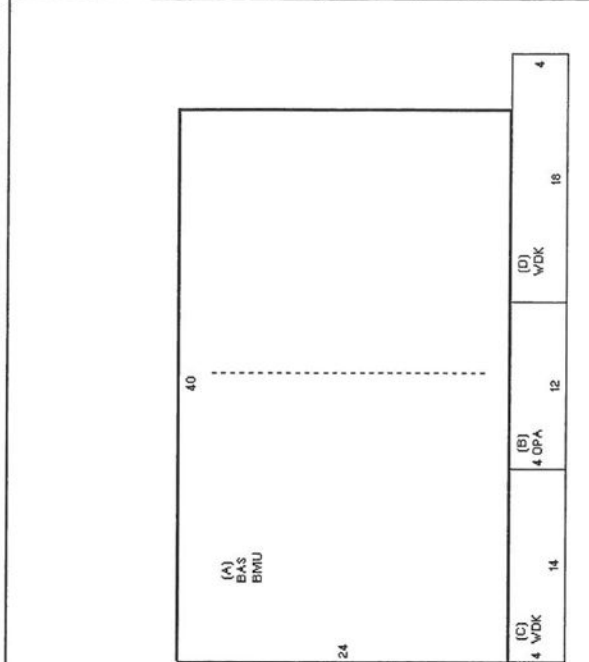
PHOTO 11/10/2011



BLDG COMMENTS
TOP OF THE HILL THRIFT SHOP & GALLERY

BUILDING	CD	ADJ	DESC	MEASURE	DF
5			CIM	11/1/2011	DF
20			1.95 OFFICE BUILDING [100%]	11/1/2011	DF
			0.90 AVE-/LOW+ [100%]	11/9/2011	DF
			1.00 WOOD FRAME [100%]		

YEAR BLT	NET AREA	\$/LA(RCN)	CAPACITY	SIZE ADJ	UNITS	ADJ
1991	960	\$220		1,271	1,271	1,271
				DETAIL ADJ	1,972	1,972
				OVERALL	1,000	1,000
				STORIES	1	1
				% HEATED	100	100
				% A/C	0	0
				% SPRINKLERS	0	0



TOTAL RCN	CONDITION ELEM	CD
211,392	53,062	
	150,955	
	2,090	
	5,285	

EFF.YR/AGE	1991 / 23
COND	37 37%
FUNC	0
ECON	0
DEPR	37 % GD 63
RCNLD	\$133,200

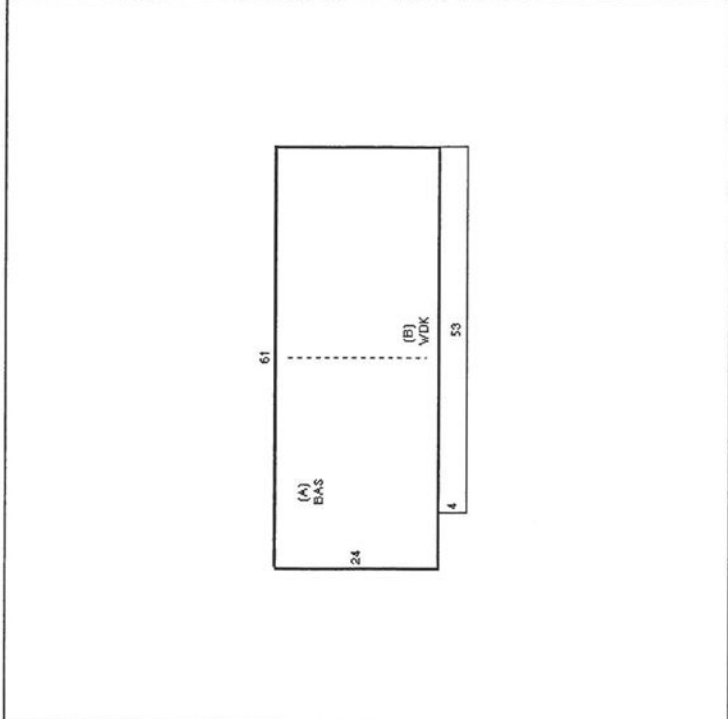
Key: 1290

Town of TRURO - Fiscal Year 2016

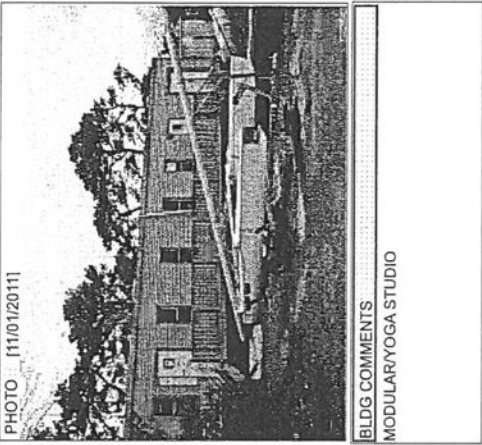
8/19/2015 9:51 am SEQ #: 1,285

CLASS	3250	CLASS%	100	SMALL RETAIL	DESCRIPTION
PMT NO		PMT DT		TY	DESC
AMOUNT		BY		1st	%

CD	T	AC/SF/UN	Nbhd	Intf1	Intf2	Intf3	Lpl	VC	CREDIT AMT	ADJ VALUE
CURRENT OWNER: WINKLER ROUTE SIX TRUST TRS: WINKLER MICHAEL F PO BOX 1110 TRURO, MA 02666-1110										
PARCEL ID: 39-166-0 LOCATION: 1 NOONS HGTS RD TRANSFER HISTORY: DOS T SALE PRICE BK-FG (Cert)										



TOTAL		ZONING		FRNT		PREVIOUS	
Nbhd		NO				72,500	
Intf1		TE					
Intf2							



TY	QUAL	COND	DIM/NOTE	YB	UNITS	ADJ PRICE	RCNLD

BUILDING	CD	ADJ	DESC	MEASURE	11/1/2011	DF
MODEL	5		CIM	LIST	11/1/2011	DF
STYLE	53	1.13	STORAGE GARAGE [100%]	REVIEW	11/9/2011	DF
QUALITY		0.90	AVE-/LOW+ [100%]			
U FRAME	1	1.00	WOOD FRAME [100%]			

YEAR BLT	2005	SIZE ADJ	1.085	UNITS	ADJ
NET AREA	1,464	DETAIL ADJ	0.987		
\$/LN(A/RCN)	\$70	OVERALL	1.000		

STORIES	1	ADJ	
% HEATED	100		
% A/C	0		
% SPRINKLERS	0		

ELEMENT	CD	DESCRIPTION	ADJ
FOUNDATION	1	PIER	1.00
EXTERIOR WALL	4	VINYL	1.01
ROOF STRUCTURE	4	FLAT/SHED	0.98
ROOF COVER	10	METAL	0.98
FLOORING	4	VINYL	0.98
INT FINISH	2	DRYWALL	1.02
H.V.A.C.	7	FL/WALL FURNACE	0.95
FUEL SOURCE	3	ELECTRIC	1.00

S	BAT	T	DESCRIPTION	UNITS	YB	ADJ PRICE	RCN
A	BAS	L	BASE AREA	1,464	2005	67.15	98,314
B	WDK	N	WOOD DECK	212		17.63	3,738

TOTAL RCN	102,052
CONDITION ELEM	CD
EFF.YR/AGE	2005 / 9
COND	09 09%
FUNC	20
ECON	0
DEPR	29 %GD 71
RCNLD	\$72,500

Key: 1290

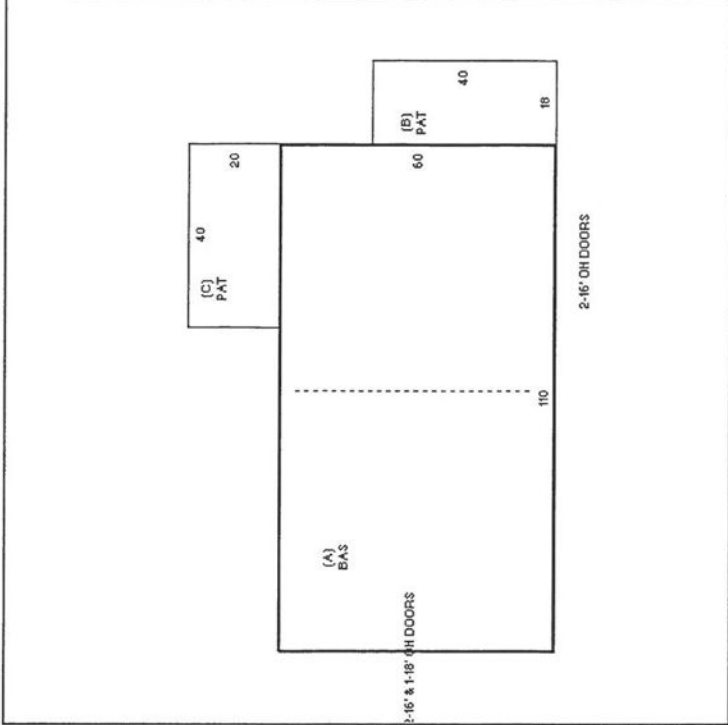
Town of TRURO - Fiscal Year 2016

8/19/2015 9:51 am SEQ #: 1,286

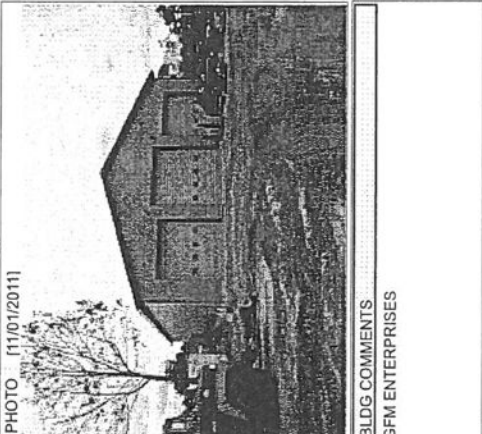
CLASS	CLASS%	DESCRIPTION	BN ID	BN	CARD			
3250	100	SMALL RETAIL	3	3	3 of 3			
PMT NO	PMT DT	TY	DESC	AMOUNT	INSP	BY	1st	%

CD	T	AC/SF/UN	Nbhd	Intf1	Intf2	Intf3	Lpl	VC	CREDIT AMT	ADJ VALUE

TOTAL	ZONING	FRNT	PREVIOUS



ASSESSED	CURRENT	PREVIOUS
LAND		
BUILDING	335,300	
DETACHED		
OTHER		
TOTAL		



TY	QUAL	COND	DIM/NOTE	YB	UNITS	ADJ PRICE	RCNLD

BUILDING	CD	ADJ	DESC	DF
MODEL	5		CIM	DF
STYLE	53	1.13	STORAGE GARAGE [100%]	DF
QUALITY	L	0.83	LOW COST [100%]	DF
FRAME	4	1.00	METAL FRAME [100%]	DF

YEAR BLT	NET AREA	SNLA/RCN	SIZE ADJ	DETAIL ADJ	OVERALL	UNITS	ADJ
2009	6,600	\$53	0.825	1,100	1,000	1	

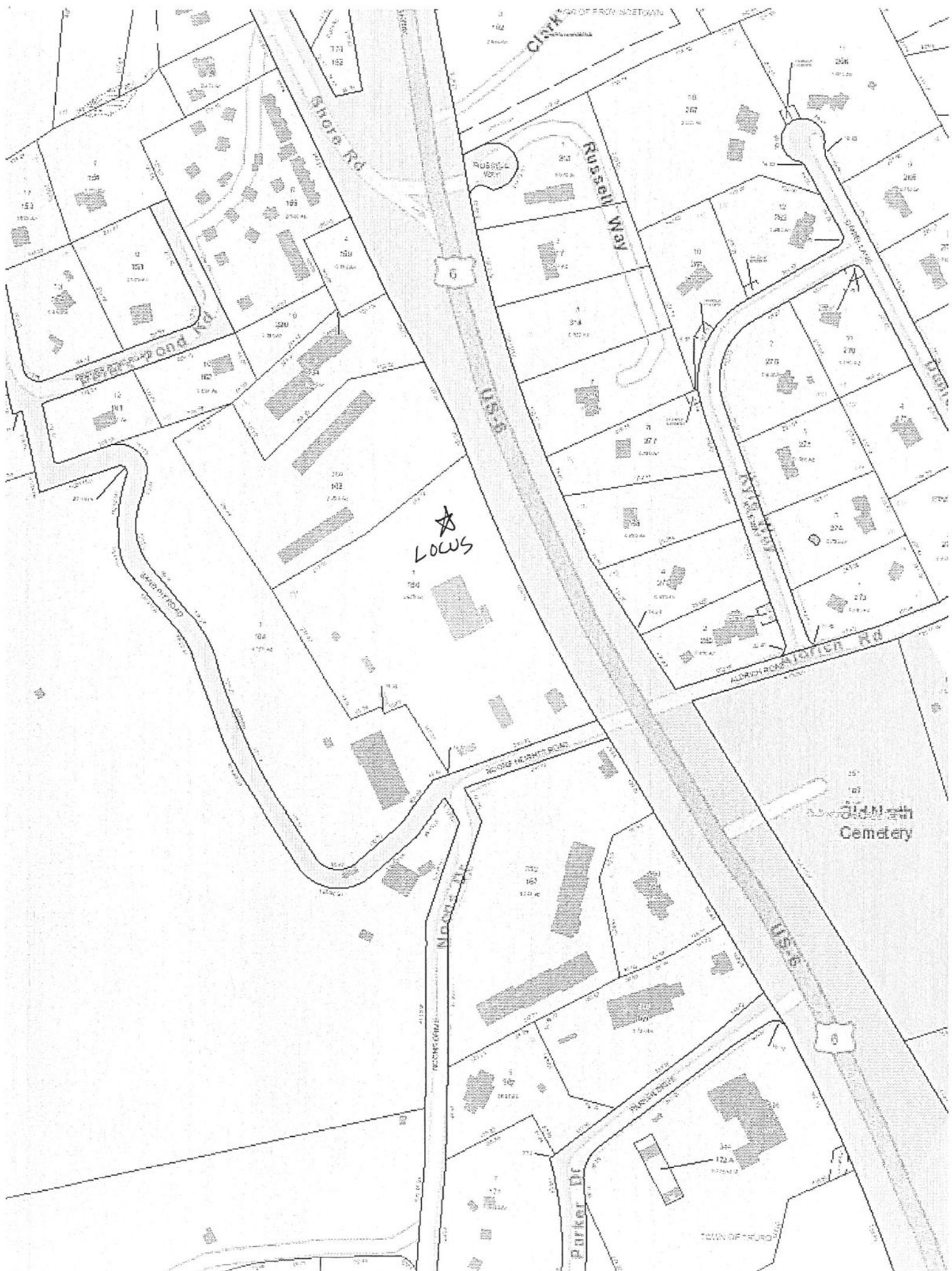
STORIES	% HEATED	% A/C	% SPRINKLERS
1	100	0	0

ELEMENT	CD	DESCRIPTION	ADJ
FOUNDATION	2	SLAB	1.00
EXTERIOR WALL	19	PRE-FAB METAL	1.01
ROOF STRUCTURE	1	GABLE	1.00
ROOF COVER	10	METAL	0.98
FLOORING	9	CONCRETE	0.95
INT FINISH	6	MINIMUM	0.95
H.V.A.C.	2	HOT WATER	1.02
FUEL SOURCE	1	OIL	1.00

S	BAT	T	DESCRIPTION	UNITS	YB	ADJ PRICE	RCN	TOTAL RCN
A	BAS	L	BASE AREA	6,600	2009	52.50	346,499	352,910
+	PAT	N	PATIO	1,520		4.22	6,411	

EFF.YR/AGE	2009 / 5
COND	05 05%
FUNC	0
ECON	0
DEPR	5 %GD 95
RCNLD	\$335,300

D E T A C H E D



★
LOWS

34th
Cemetery

TOWN OF THURO

QUITCLAIM DEED

a/k/a PAULA A. NOONS
PAULA NOONS, as an Individual, of P.O. Box 23, North Truro,
Massachusetts 02642

in consideration of SEVEN HUNDRED FIFTY THOUSAND and 00/100
(\$750,000.00) DOLLARS, paid

grant to MICHAEL F. WINKLER as Trustee of Winkler Route Six
Trust u/d/t dated November 14, 2003, with Certificate of Trust
recorded herewith, with an address P.O. Box 1110, Truro,
Massachusetts 02666

with QUITCLAIM COVENANTS

the land with the buildings and improvements thereon, in Truro,
Barnstable County, Commonwealth of Massachusetts, bounded and
described as follows:

LOT 6 containing an area of 192,869 sq.ft.± and being 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: 1IN. = 60FT., Nov. 1994, Slade Associates, Inc., Reg.
Land Surveyors, Rte. 6 + Pine Pt. Rd., Wellfleet, MA., 02667" which
plan is recorded with the Barnstable County Registry of Deeds in
Plan Book 540, Page 4.

No fee in the Private Way 40' wide as shown on said plan is hereby
conveyed.

There is appurtenant to the above-described premises the right to
use the 40' wide Private Way as shown on said plan for all purposes
for which ways are used in the Town of Truro.

For Grantor's title see the deed of Donald W. Noons dated
November 4, 1997, and recorded with said Registry in Book 11224,
Page 147.

Property Address: Lot 6, Route 6
Truro, MA 02666

WITNESS my hand and seal this 14th day of November, 2003

CANCELLED
REG & DEEDS
REG # 01
BARNSTABLE

11/14/03 2:50PM 01
000000 #8841
FEE \$2565.00
CASH \$2565.00

Paula Noons

Paula Noons

e

COMMONWEALTH OF MASSACHUSETTS

COUNTY OF BARNSTABLE

November 14, 2003

Then personally appeared the above-named PAULA NOONS and acknowledged the foregoing instrument to be her free act and deed, before me,

Lester J. Murphy Jr
Lester J. Murphy Jr Notary Public

My commission expires: September 17, 2010



ec:\real.est\deeds\noons.to.winkler

~~CANCELLED~~
BARNSTABLE COUNTY
REGISTRY OF DEEDS
COUNTY CLERK TAX

DATE 11.14.'03 FRI

TAX \$1710.00
TOTAL \$1710.00
CASH \$1710.00
CLERK 1 NO.044607
TIME 14:14 1111

NOTICE OF ZONING VIOLATION
AND ENFORCEMENT ACTION


This notice is given pursuant to the second paragraph of Massachusetts Laws Chapter 40A, Section 7, amended by St.2002, c. 393, § 1.

This notice concerns the real property which is shown on the Truro Assessors' Atlas Sheet 39 as Parcel 166, which bears the street address 1 Noons Heights Road in Truro, Barnstable County, Massachusetts, and which was conveyed to Michael F. Winkler, as the trustee of the Winkler Route Six Trust, by the deed that was recorded in the Barnstable County Registry of Deeds Book 17926 at Pages 238 and 239.

In *Richard Stevens, as the Acting Building Commissioner of the Town of Truro v. Michael F. Winkler, as the Trustee of the Winkler Route Six Trust, Gregory F. Morris, GFM Enterprises, Inc., and Ethan Poulin*, the plaintiff filed in the Barnstable Superior Court a complaint in which he alleged that the defendants were conducting without authorization manufacturing processes at 1 Noons Heights Road and that the uses and physical state of the lot had changed impermissibly from what the Truro Planning Board had approved.

This notice is recorded in order to give notice of the Building Commissioner's action to enforce the Town of Truro Zoning Bylaw and the terms of the administrative decisions rendered pursuant to it.

Dated at Dennis, Massachusetts this 28th day of February 2014.


E. JAMES VEARA
Counsel for the Acting Building
Commissioner
of the Town of Truro
Zisson & Veara, P.C.
828 Main Street, P.O. Box 2031
Dennis, MA 02638-0043
508-385-6031
BBO# 562161

BARNSTABLE REGISTRY OF DEEDS

Property Address: 1 Noons Heights Road, Truro, Massachusetts



Health/Conservation Agent Town of Truro

Phone: (508) 349-7004 ext. 32

Fax: (508) 349-5850

MEMO

To: Carole Ridley, Planning Consultant for the Town of Truro

From: Patricia Pajaron

CC:

Date: April 26, 2016

Re: Development Application Referral, Winkler Route Six Trust, Michael Winkler, 1 Noons Heights Rd., Map 39 Parcel 166

I have reviewed the supplemental information submitted for the Application for Site Plan for approval of the current conditions and use of the property for commercial and equipment and material storage purposes for Mr. Winkler's crane company, an excavation company and a landscaping company. A site plan prepared by Tim Brady, PE of East Cape Engineering dated January 13, 2016 with a most recent revision date of April 11, 2016 has been submitted with the application. The following outlines my questions and comments relative to this submittal:

- The entire parcel is located in the Zone II of the South Hollow Wellfield and contains a portion of the 185 foot protective radius or Zone I* for the Cape View Motel Public Water Supply well which encroaches into the north end of this property. There should be a note on the plan that this parcel is located within the Zone II.
- The sand pile that was located within the Cape View PWS radius has been removed, however building 8 and the concrete slab as shown on the plan was to be removed prior to the hearing date as indicated in Attorney Benjamin Zehnder's letter dated March 29, 2016.
- A portion of the storage bins is over the property line to the west.
- No utilities (water lines, well, electric etc.) are shown on the plan.
- As shown in the endorsed 2009 plan, a proposed office building is located on the west side of building 3. A Title 5 septic system has been sited on the lot to serve the office building and is also located out of the Zone 1 of the PWS for Cape View Motel. There is an existing Title 5 system located in the southeast corner of the lot that serves the retail building. Total accumulative flow allowed for this lot given 440 gallons per day (gpd) per acre is approximately 1,966 gpd. It appears that there is enough flow available for the existing and proposed use (office and retail space), however I would need to see the design flow breakdown of each use on the site and sewage plan. Is there a timeframe when will this building will be constructed?
- The storage of oil, fuel or other hazardous material should be shown in detail on the plan and description of best management practices** (BMPs) when storing these barrels.
- A portion of this property is located within the NHESP Priority Habitat of Rare Species, mapped area PH 15 as shown. Changes from the 2009 approved site plan would a

filing with NHESP.

** **Zone I** means the protective radius required around a public water supply well or wellfield. For public water system wells with approved yields of 100,000 gpd or greater, the protective radius is 400 feet. Tubular wellfields require a 250-foot protective radius. Protective radii for all other public water system wells are determined by the following equation: Zone I radius in feet = (150x log of pumping rate in gpd) - 350. This equation is equivalent to the chart in the Guidelines and Policies for Public Water Systems. A default Zone I radius or a Zone I radius otherwise computed and determined by the Department shall be applied to transient non-community (TNC) and non-transient non-community (NTNC) wells when there is no metered rate of withdrawal or no approved pumping rate. In no case shall the Zone I radius be less than 100 feet.*

*****Best Management Practices (BMPs)** are measures that are used to protect and improve surface water and groundwater quality. BMPs can be structural, such as oil & grease trap containment system, nonstructural, such as hazardous waste collection days or managerial, such as employee training on proper disposal procedures.*