

**TOWN OF TRURO
ZONING BOARD OF APPEALS
MEETING MINUTES
December 3, 2020
Remote Meeting**

Members Present: Chair-Art Hultin, John Dundas, Fred Todd, Chris Lucy, John Thornley, Alternate-Darrell Shedd, Alternate-Heidi Townsend

Others Present: Atty. Barbara Huggins-Carboni, Heath and Conservation Agent-Emily Beebe, Ted Malone, Mark Nelson, Jessica Snare, John O'Reilly, Elizabeth Bradfield, Raymond Clarke, David Kirschner, Scott Warner, Hank Keenan, Karen Ruymann, Andy English, Pamela Wolff, Regan McCarthy

Atty. Huggins-Carboni read off instructions for citizens interested in joining the meeting.

Chair Hultin began the meeting at 5:30pm.

Public Hearing-Continued

2019-008 ZBA – Community Housing Resource, Inc. seeks approval for a Comprehensive Permit pursuant to G.L. c. 40B, §§20-23 to create 40 residential rental units, of which not less than 20% or 10 units shall be restricted as affordable for low or moderate income persons or families, to be constructed on property located at 22 Highland Road, as shown on Assessor's Map 36 and Parcel 238-0 containing 3.91 acres of land area.

Chair Hultin gave a recap of the past year. He asked Mr. Nelson to go through the most recent submittal he had. Mr. Nelson has learned that the system which was installed at the Westport site was set up, and designed, to meet performance standards of nitrogen in the waste water effluent of 5mg/L. At a meeting last March, Horsley Witten had made the recommendation that the system should be designed to meet a 10mg/L standard. There would be some changes in the system design to get to that level of 5mg/L, but when looking at the data from the system in Westport it's meeting, on average, 5mg/L. That's in the effluent as it's going into the leech field. He thinks the best way to do this is to have the system designed to meet 5mg/L, but he thinks they need to recognize there will be a little bit of fluctuation of the water quality as seen at the Westport site. The system could be designed for 5mg/L, and establish a strict standard at 10mg/L, but recognize on average it should exceed the 5mg/L standard based on monthly sampling and over time quarterly sampling. That allows the system to do everything it can for the wastewater before it goes into the ground.

Member Todd had no questions at this point in time. He felt Mr. Nelson's memo was clear.

Member Dundas didn't have questions or comments. He watched the Board of Health meeting and the work that's gone into explaining everything has been exceptional.

Member Lucy is a bit confused as to why the Board is getting this report now, stating that the system should be designed down to 5mg/L. He's not opposed to it, but they've seen this system reviewed a number of times and now, in the 11th hour, recommendations have been made to change the levels of nitrate leaving the system. How does this happen? Are there more components, a bigger leeching area, a bigger filter system, additional cost, or is it a matter of additional pumping and circulation of the waste to become cleaner?

Member Townsend noted that in the last paragraph of his memo, Mr. Nelson mentioned that the TSS/BOD were at 99%. She asked if he knew what the rate was in a standard Title 5 septic. Mr. Nelson said that while he did not have the numbers in front of him, they would be significantly higher because there is little to no treatment happening.

Member Shedd asked Mr. Nelson that if they're talking about 5mg/L leaving the property, is there any kind of measurement that could be used to see at a ¼ mile what that measurement would end up being? Mr. Nelson stated that it would take some time to figure that out. They know, roughly, the direction the groundwater is flowing from the site. As it moves downgradient, the plume will dissolve/diffuse and spread out a bit and the concentrations will go down. When they did their calculations, assuming 10 mg/L, they said that at the other side of Route 6 the concentration would go down to 7. If you are starting at 5mg/L, you could end at 3mg/L to 4mg/L before it crosses over, heading to other property lines downgradient.

Member Thornley stated that he knows the people who are living in the Pond Village area are quite uneasy about what's going to happen which is why he proposed the idea of bringing in fresh drinking water for them, so they do not have to use their wells.

Chair Hultin asked Mr. O'Reilly what the mechanics are of increasing the system? Mr. O'Reilly explained that they talked to the manufacturers of the bio-macrobs, and the actual footprint of the treatment system will not change. The changes/modifications being asked for are internal. He proceeded to describe the treatment chamber and explained what changes would have to be made. Mr. Malone stated that while there would not be a large increase in the development cost of the system design, the operations cost will have an impact.

Chair Hultin stated it sounded like the system could be designed for 5mg/L and he asked Mr. Nelson if that were correct. Mr. Nelson confirmed that if the system is designed for 5mg/L, what they've seen with the system in Westport is that the average is slightly below 5mg/L. The bigger question is that if the system is not performing properly and the level gets to 10mg/L he thinks the contingency plan could be used to make sure the system is brought back into overall compliance. Chair Hultin then asked, if this comes to pass, would there need to be a waiver?

Atty. Huggins-Carboni began by recalling the Board of Health Regulations section which requires a minimum of 10,000 square feet per bedroom. That works out to be the same as the regulatory requirements, but she thinks the Board would still need to grant a waiver because it's expressed in the Board of Health Regulation as a minimum requirement of area per bedroom and this would be exceeding that regulation.

Member Thornley asked how the final figure of the effluent, when it gets downstream, is affected by drought? Mr. Nelson said that if there were an impact, it would be relatively minor.

Public Comment

Chair Hultin stated that Member Thornley had submitted a letter as a private individual for public comment and he invited him to go first.

John Thornley-He is very concerned about using a high-tech system to solve the problems of the water supply. He doesn't want to put somebody in potential danger. The Town is providing fresh water to the Cloverleaf site anyway, so he would say we should continue that pipe all the way down to Pond Village and let people tap into that. Member Shedd states he agrees in one respect with Mr. Thornley and he doesn't think Town water is a bad solution, however in his letter Mr. Thornley says that the cost should be part of the Cloverleaf project and Member Shedd does not think that's fair at all. Mr. Thornley clarified that the cost would be paid by the Town. Member Lucy said that there is an engaged engineering firm that will be preparing a proposal for a water line install and the cost associated to that. That study and report is out there and is being prepared currently for the Pond Village area.

Elizabeth Bradfield-She is not officially a member of Pond Village as she is an abutter to the Cloverleaf. The idea of providing Town water to Pond Village while it will benefit the members of Pond Village it won't benefit all the people who are potentially impacted by the Cloverleaf. She's concerned for her own water supply and the focus on Pond Village at the exclusion of other people who might be impacted is of concern to her.

Raymond Clarke-If the Town supplies water to a large section of the Town it's going to remove the motivation to keep the groundwater low in nitrogen. Groundwater is seeping into the Cape Cod Bay, we have plankton blooms, and we have to be careful of the general health of our ecosystem.

Health/Conservation Agent Beebe stated that as a tool for the Board of Health, having public water available for people who might not have options for siting their well in a different location is something the Board of Health should have but she does agree with Mr. Clarke. We cannot take our eye off the ball to reduce the contaminate load to the ground water overall. She thinks the public should be aware that the Town has contracted with the Cape Cod Commission to conduct an analysis of the watershed of Standish Pond so we can get a handle on what the nutrient loading sources are and start reducing the nutrient load to that watershed.

It seems to Chair Hultin that what's being proposed and what's been set forth as something that sounds acceptable to the developer, and could become a requirement of the ZBA waiver, is a treatment of effluent that far exceeds anything that residences in the area (and in Town in general) would ever treat their effluent water.

David Kirschner-Mr. Kirschner read through a letter. He stated that the Zoning Board of Appeals has been fully notified of the harmful effects of nitrate concentrations at, or below, levels of 5mg/L via the Docs report, and asked if all ZBA members had read the report. Chair Hultin stated, yes. Mr. Kirschner then asked if they all understood the implications of the harmful effects of nitrates on the health and safety of the Pond Village residents, and all Truro residents? Chair Hultin stated that they all know that nitrates are not a welcome thing in drinking water. They have read the literature, along with reams of reports, so the answer was yes. Mr. Kirschner said that the residents have asked for a hydrogeologic study of the Pond Village watershed to assess the downgradient impacts of the Cloverleaf effluent on the Village. The residents have never been given a clear answer from the ZBA or the Board of Health about doing that study prior to granting the waiver. Chair Hultin replied, stating that the ZBA does not hire anybody. They are not an Administrative Board and he suggested that the request be taken up by the Select Board. Mr. Nelson informed the group that as part of the initial work on this project they developed a basic water table map showing groundwater flow direction from the Cloverleaf parcel down towards the pond, across Pond Road. The question of trying to tell which individual wells might be directly downgradient of the Cloverleaf parcel is very complex. Mr. Nelson then explained all the

data they would need. As a result, Horsley Witten's approach has been to recommend having a level of treatment on this wastewater facility to take as much of the risk from that facility off of the table. A question as to ease of mapping was posed to Health/Conservation Agent Beebe. Health/Conservation Agent Beebe discussed the question as to whether such mapping was feasible. She believes Mr. Nelson's description of the complexity of such a study to be true. She added that there is no budget to do the study. Horsley Witten's conclusions and peer reviews steered the Applicant to make adjustments to the project to such a degree that Horsley Witten's determination is now that there will not be impacts. To that end, that is why a hydrogeologic study has not been conducted. Because it does not appear to need one.

Scott Warner-He gave reasons why the residents are concerned. There is only one system that they are basing all of the performance data on (the Westport system) and where is the evidence that the system is performing at the same level elsewhere? Health/Conservation Agent agreed, the system is in "piloting", but it's a piloting project that's been approved by the DEP. The piloting approval is a 20-page long document and is a process that was used for other systems that are now in operation that are very similar. It is a treatment technology that's used in other places and if it should not work, the manufacturer would be under obligation to replace the system with something that did work, and those systems do exist.

Mr Warner said that the New England Water Environment Association (NEWEA) on their website states that I/A systems have a projected lifespan of approximately 20-30 years. He asked what the plan would be for the inevitable replacement of the proposed system. Mr. O'Reilly said that the lifespan Mr. Warner was referring to is dealing with the media that's involved with the filtering system of the submerged membranes. Those will be changed out as needed. Concrete tanks and piping don't dissipate or fail at 20 years.

Mr. Warner stated that a group of people took a look at the owner's manual for the biomicrobics system and they had a question.

- How will the Cloverleaf property owner ensure that tenants don't compromise the system? Mr. O'Reilly stated that when you have a system this large, cleaning products, surfactants, etc. all cause problems in treatment facilities. In systems such as these there's an educational process that needs to be done as far as what can and what cannot be flushed down the drain. Mr. Nelson reminded everyone that they will have monitoring in place which will give feedback. If there is an issue, the renters can be notified.

Hank Keenan-He finds the response to what tenants might be putting down the drain inadequate. There needs to be some sort of consequence. Member Todd resents the implication that just because people are living in these units they aren't decent citizens and can't respect the water.

Raymond Clarke-Stated that independently of the motivation of individuals living at the Cloverleaf, if you have 39 families then the consequences of messing it up are much greater. Mr. Nelson explained that one person affecting a system that's serving 39 residences has a proportional impact on the quality of that effluent. When the system is monitored, and a problem is identified then there's the ability to go find how it started and to have a solution. In light of public comment tonight, Member Shedd would like to address the comment about the ZBA blaming the residents of Pond Village for water quality. It's not a question of blame, but more of common sense and responsibility. The Board of Health has every right to inspect the system that is suspect of emitting pollution. We avoided this because it would force homeowners to spend a great deal of money to upgrade their systems. The Board of Health has the

authority to have a homeowner upgrade their system if it is polluting groundwater. In attending the last Board of Health meeting, Member Shedd learned that a lot of systems are emitting 20-30 mg. with cesspools being in operation. How can people nitpick over this system (which is unbelievably sophisticated) while talking about systems that are emitting 20-30 mg. Why aren't we addressing these issues? Another issue brought up at the Board of Health meeting was the Beach Office. He attended the Annual Town Meeting where there was an extended discussion about the septic system there. He went down and looked at the concrete tank and the extensive system that had to go in for that small beach office. The land next door floods badly. What happens to the residence right next to the Beach Office? If we are really concerned about the water quality in that area, the real reason that there's a problem should be addressed.

Karen Ruymann-She'd like everyone to think about the notion of personal responsibility in a public health situation in a community. She does not think people are going to protect each other.

Andy English-He asked if what Mr. Nelson referred to with the system bringing levels down to 5 was a done deal? Is that definitely what the Cloverleaf system will get? Chair Hultin stated that presently the topic is being discussed. Mr. English asked if the Board was going to go ahead and sign the waiver on the old system which brings levels to 10 or the new system for 5? Chair Hultin said they would discuss that after hearing all public input.

Pamela Wolff-She has a few questions that have come to mind.

- In the discussion in the difference between the new proposed system and the original system, it was said that this would be doubling the use of the chemicals for the treatment and that would add to the operating budget. Is the income from the 7 market-rate units available to ameliorate the operating costs or is the Town expected to absorb the entire cost? Atty. Huggins-Carboni believes the way this will be addressed is that the Board will determine whether it thinks it's a condition that should be included in any approval of the project. Under 40B the applicant has the opportunity to say that expense would render the project uneconomic. The applicant could also say that there will have to be another source of funding. This Board needs to focus on what conditions it thinks should be in the permit. If the applicant can gain support from the Town, that's certainly a possibility. But this Board needs to focus on whether this project can be conditioned so that it's consistent with local needs and protects public health and safety. Relative to the question, Chair Hultin stated there is no distinction to the revenue stream between the market rate units and the subsidized units.
- Has there been any discussion to reduce the flow of effluent from the 39 units (separating grey water from black water)? Mr. O'Reilly stated they have not looked into separating the two waters from the waste stream. It would require a completely different type of collection system and processing unit. Ms. Wolff asked if there would be any major advantage to doing it? Mr. O'Reilly stated that from an engineering standpoint it can be done. You'd be looking at a much more expensive infrastructure and you won't minimize the nitrogen from the wastewater stream.
- She asked if there has been any consideration to trying to reestablish the Water Resources Oversight Committee? Chair Hultin thinks it's a good question but is far outside the realm of items they should discuss at their meeting. She then asked if everyone were aware that the WROC existed? Chair Hultin does not see the relevance of her question.
- She understands the Town has authorized creating permanent, year-round, condominium units out of ones that have been seasonal. She does not know how many units or rooms or flushing toilets that represents. She asked if there's been any conversation about the potential effects of

the effluent from those condos, which she believes are not required to upgrade their systems, on the aquifer which serves the Highland area. Chair Hultin stated the condominium law is already in effect and that her question is more suited for the Board of Health.

Regan McCarthy- We might want to start to consider some conditions that would give Pond Village and Professional Heights some additional confidence that the 5 mg/L standard can be achieved on a sustained basis. She then listed 3 things related to conditions:

- Is the Board willing to condition, or discuss conditioning, that 5 mg/L standard in the ZBA's standards as they consider approval of this waiver?
- Is the Board willing to consider including a requirement for well water monitoring in Pond Village for a sustained period of time to make sure that the projections about the operation of this system actually prove to be true?
- Is it possible, on the conditions matter, to get some explanation of how that goes as a public discussion?

Chair Hultin stated that the lower standard, which seems achievable, will certainly be a strong point of discussion and consideration in the conditions. He does not see where well monitoring throughout some part of Truro is going to be the responsibility of the Cloverleaf developer, but it's probably a good idea. Individuals can test their own wells any time they want, and those results could be given to the Health Department. The whole decision requires that the applicant follow the conditions. If the conditions are not followed then it's referred back to the appropriate party (most likely the ZBA). Ms. McCarthy stated she was not concerned about the enforcement process, but rather curious whether in the ZBA developing conditions is there a process about conditions and conditioning that the public can understand and participate in? Chair Hultin believes that's what they are doing right now.

Chair Hultin asked if there were any more comments. Hearing none, he then called an end to the public comment. He added that the public is welcome to monitor the meeting going forward and he'd like to continue with the agenda as to the draft decision for this Comprehensive Permit. He asked Atty. Huggins-Carboni to comment on what is in front of the ZBA.

Atty. Huggins-Carboni stated that she would call this the start of a draft. There are findings that are peculiar to the 40B process about whether the applicant is an eligible entity, whether the project qualifies and whether the applicant has site control. She continued to go through the draft.

Chair Hultin asked the Board if they had been able to review the draft at all. Both Members Dundas and Todd had gone over it and wished to either make corrections or additions. Atty. Huggins-Carboni suggested the best way would be to email her directly. Member Todd asked Atty. Huggins-Carboni how she envisioned having the waivers incorporated. Atty. Huggins-Carboni said that they would be added as an appendix. She added that this was a public document and it was available for viewing on the Town website.

It was determined to hold the next meeting on December 17th, 2020 at 5:30pm.

Member Thornley made a motion to continue the hearing 2019-008 ZBA to December 17, 2020.

Member Todd seconded.

So voted; 7-0-0, motion carries.

Respectfully Submitted,

Noelle L. Scoullar

