

**TOWN OF TRURO  
ZONING BOARD OF APPEALS  
MEETING MINUTES  
October 08, 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, Mark Nelson, Ted Malone, DPW Director-Jarrold Cabral, Elizabeth Sturdy, Mary Ann Larkin, Fred Ruymann, Raymond Clarke, Karen Ruymann, Jessica Snare, Health Agent-Emily Beebe, David Kirchner, Laura English, Ronald Boyles, Sheila Coleman, Kathy Gagne, Steven Stahl, David Kirschner, Regan McCarthy, Ronald Fichtner

Atty. Huggins-Carboni read off instructions for citizens interested in how to join the meeting.

Chair Hultin called the meeting to order at 5:30pm.

**Public Comment**

**Public Comment letter from Bill Golden**

Chair Hultin stated that the letter is in the ZBA packet and is on the Town of Truro website. He said that they were not reading the letters out loud verbatim as they are in the record. Chair Hultin offered Mr. Golden five minutes to speak if he was in attendance. Mr. Golden was not in attendance. Chair Hultin stated the letter had to do with the amount of money spent at Town Meeting. He (Chair Hultin) was also surprised at how quickly 20 million dollars could be spent without discussion and was equally surprised that 550 thousand dollars additionally could be spent without discussion. He does not think that's the way Town Meeting was intended to be and that's his personal opinion in response to Mr. Golden's letter.

**Public Comment packet from Residents of Pond Village regarding water quality**

Chair Hultin stated the packet was quite long and covered several topics, each one of them important. He asked if one of the authors of the letter was present to give a summary of what the letter is to demonstrate.

Ms. Larkin stated that she was told a while back by some volunteer scientists and doctors about the nitrates in their drinking water. She used to love getting water from her spigot but now when she drinks from there, she feels miserable. She's not against the Cloverleaf, she is in favor of it.

Fred Ruymann is a practicing gastroenterologist at Cape Cod Hospital. He was brought to the Cape to provide expertise in the area of pancreatic cancer, colon cancer, and gastric cancer. There has been an explosion of cancer on the Cape, particularly breast, esophageal, and pancreatic. There are tremendous concerns about the level of nitrates, particularly within the Pond Village community. Many people are above the level that is deemed to be dangerous by the Federal Government. The increase in cancer begins at very low levels. Once the resource is spoiled there is no going back. It's a cumulative risk.

Raymond Clarke would like to underline what Mr. Ruymann said. Many cancers seem to occur with ppm levels less than 5, let alone 10. He stated that the Health Department "red-flags" levels of 5. Even with

a level of 5 as a maximum, will the ZBA hold the Cloverleaf to the science and keep the levels below 5, or will they allow the developer to use the outdated policy of 10 ppm?

Karen Ruymann has been watching the meetings since the beginning of the year, trying to understand the process. She believes in a safe environment for all. Health Agent, Emily Beebe, was queried at one of the meetings about the well water for Pond Village. "Our information is sketchy at best" was a direct quote from Health Agent Beebe at a meeting in the Spring. Health Agent Beebe had mentioned that the Board of Health has tried to get funding several times over the past few years to conduct a thorough survey of the well water, but it's never been able to receive the funding. Many residents of Pond Village have obtained their own water tests so they could establish baseline data should the waiver be granted for the Cloverleaf project. A few citizens received results that indicate that they are essentially being poisoned by the current nitrate levels. Other citizens received results that are concerning when considered in light of the recommendations of the Cape Cod Commission. Ms. Ruymann is asking that the ZBA request the Board of Health to review its current water standards and to undertake a comprehensive study of the well water quality in the Pond Village neighborhood.

Health Agent Emily Beebe stated that there has been a lot of movement in the area of water quality testing. She wished to go over salient points of the memo submitted to the ZBA;

- Refers the ZBA to review appendix B "Private wells in Truro-Safe Water". This paper argues for consideration and possible reduction of the standard for nitrate/nitrogen concentration in the drinking water from 10 mg to 5 mg. All BOH members have received a copy of this paper and have discussed placing this on their agenda for December 1, 2020 at 4:30pm.
- The letter has an appendix and summary of the new results of water testing Ms. Ruymann referenced. This document expresses concerns about the existing nitrate levels in private wells in the Pond Village area. The document states the BOH has ignored the resident's concerns, which Health Agent Beebe disputes. The BOH has been talking about this issue, as a community, for many months. It's clear that the water quality conditions in the Pond Village area reflects what's happening now. The area was identified as an area of concern in the 2014 Weston and Sampson study. Last month they contracted with the Cape Cod Commission to conduct a study.
- Health Agent Beebe noted that the results of the last water tests done in the Pond Village area were not shared with the Health Department or the Board of Health. The letter in the ZBA packet from Pond Village residents is the first time she, the Department, and the Board of Health, have seen the recent private well data.

Ms. Ruymann stated that she did submit her results to the Board of Health about two weeks ago via email. She also encouraged other members of her community to do the same.

Member Shedd appreciates all the public input and the situation Pond Village is in. It does sound like Pond Village has some issues, above and beyond, the Cloverleaf project. He asked how much latitude does the ZBA have in superseding State regulations? Chair Hultin does believe there are limits to what the ZBA can do. Atty. Huggins-Carboni stated that the ZBA has the authority to waive local requirements that are stricter than the State requirements but can only do so if it finds that the waiver is consistent with public health and safety. The Board has received advice from the Board of Health and also from a peer review exactly on this topic. She would defer more discussion to when the peer reviewer can offer further comment.

Member Thornley thinks the group named "Docs for Truro" should be commended for their excellent report.

Member Townsend asked if anyone knew the number of residents of the Pond Village area that have a Title V septic versus a cesspool or older septic system? Health Agent Beebe said there are about 5 cesspools in the area that people consider the Pond Village neighborhood. Approximately 8% of the entire town is still on cesspools.

Member Todd asked when Health Agent Beebe expects to hear results from the Cape Cod Commission study. Health Agent Beebe stated that there has not been a timeline set yet. It will be one of the first tasks the Board of Health will engage in as they break down the different parts of the project.

Member Dundas asked if water testing should be done on a more frequent basis to get an accurate reflection on levels in the Pond Village area. Health Agent Beebe agrees that people need to test and retest. If numbers are good, testing once a year should suffice, but if there are numbers of concern testing should be done more frequently.

Member Lucy called Town Hall earlier in the day looking for a list of people who have upgraded their septic systems to a Title V in the Pond Village area. On Pond Road itself there are 14 septic systems that have been upgraded. He asked how many of those 14 systems are nitrogen removal systems? Health Agent Beebe did not have the number at hand however she did say the number would be "few".

David Kirchner stated that what the Pond Village residents are looking for is a more comprehensive look. It appears, from his vantage point, that the residents don't feel their issues have been thoroughly vetted and considered, particularly in light of the project and the size of the project.

Chair Hultin thinks the ZBA has covered the topic of downgradient water and what the result might be. He asked Mark Nelson if there was anything else he could add to the discussion regarding cumulative effect, downgradient. Mr. Nelson said that the location of a septic system and a nearby private well is one of the critical issues that creates these water quality concerns. An elevated level of nitrogen suggests there's a potential for a cross connection between the effluent leaving a septic system and someone's private well. Mr. Nelson proceeded to explain how the system at the Cloverleaf works.

Member Thornley made an observation that the Cloverleaf project could not go forward if we didn't have Truro town water supplied to that project. He suggested giving town water to the Pond Village people so they wouldn't be threatened by the nitrates.

An unidentified called wished to ask a question. He'd like to suggest that greater clarity be made available to the residents of Pond Village about the maintenance plan in place for the treatment system. He also stated that the system is a pilot system, and asked how confident people are in this system? Chair Hultin said they have been presented, and have reviewed, monitoring protocol for this system. It's a topic which has been thoroughly covered over the past several months. Mr. Nelson proceeded to state that they've worked through several of the details of an operation and maintenance plan for the system. The primary part is the monitoring, which he proceeded to lay out. Mr. O'Reilly has prepared a contingency plan which lays out how the operator and the applicant will work with the Board of Health moving forward. Mr. O'Reilly stated that they did lay out, in a schematic way, an example of what would happen.

- The first 12 months after the system is up and running at full or 80% capacity will start the sampling of effluent on a monthly basis.
- If approved by both the Board of Health and the DEP it could go to quarterly. It is not an automatic switch to quarterly after the 12 months.

- If there was an exceedance of 10ppm at discharge both the Board of Health and the DEP would be notified by the operator within 48 hours of the exceedance.
- The operator will immediately resample the effluent and obtain results within 48 hours.
- If the limits are still not met the operator shall review with the Board of Health and DEP, the recommended steps to be taken to bring the system into compliance.
- Those modifications to the system would be completed. A resample would be taken within 30 days and if the sample was still exceeding limits then the manufacturer would get involved to review the treatment process, review the influent, and then they would be involved in any modifications.
- The Board of Health should be notified of the 30-day sample and the recommendations by the manufacturer. The operator and manufacturer would implement the recommendations. If upon the adjustment the system is still not achieving total nitrogen, it would be the responsibility of the owner (through this pilot program and through the Disposal Works Permit) to make the corrective measures.
- This is a pilot program. There are very few systems out there that treat waste between 2,000 and 10,000 gallons per day.

Laura English had a question regarding the pilot monitoring system. She asked if there was a time limit on the monitoring of the system. Mr. O'Reilly stated that the monitoring will never end. This particular system (with being more than a single-family residence) he sees a quarterly monitoring occurring indefinitely. If the owner looked to reduce that monitoring, they would have to go to the Board of Health and DEP to seek a reduction. Ms. English asked if that was in writing within the agreement. Mr. O'Reilly said that the permit issued by the State will outline the testing requirements as well as the permit issued by the Town. Ms. English also asked about the lifespan of the treatment process. Mr. O'Reilly stated that the type of unit being specified lets the treatment process be interchangeable. If they get damaged, or clogged, they would be changed.

Mr. Clarke asked if it was possible to monitor some distance downstream, so residents have a sense of dilution. Mr. O'Reilly said the site would be required to monitor at discharge, but part of the proposal includes the installation of two monitor wells. The testing from those wells will be done four times a year.

Ms. Larkin is puzzled by the fact that the Village is supposed to be assured by the fact that the water being released will be under 10 ppm. The Village is already polluted, and 10 ppm is high.

Member Shedd wanted to make it clear to the public that none of what they are listening to tonight is new to the ZBA. The ZBA has posed the same questions to, and received answers from, Mr. Nelson and Mr. O'Reilly. The ZBA has received adequate answers. Chair Hultin stated that in fairness to people, he'd like people who have been waiting to speak to have their chance.

Ronald Boyles asked what the projected maximum capacity was of the project. Chair Hultin said that the topic has been discussed over many meetings. Mr. Boyles said he would look for that information. He also wanted to know, if the system goes down what would be the turnaround time to get it repaired. Mr. O'Reilly stated that the system is based on 68 bedrooms and a small office located in the larger unit. As far as the turnaround for repairing, if the system gets to the point where it's simply not working the owner will be under order to replace it and will also (most likely) be under order not to have any discharge from the unit.

Sheila Coleman stated that her septic has very high nitrate numbers and she'd like to reiterate Ms. Larkin's alarm about water being released under 10-ppm. The ZBA must have some latitude in terms of the 10-ppm coming out.

Chair Hultin asked Mr. Nelson about the cumulative effect (or lack of) the nitrates as they leave the Cloverleaf project. What is the mechanism by which ground water mixes, and accumulates nitrates? Mr. Nelson stated that the effluent from this project will go in the ground. It will soak in the ground water and start to flow to the South- Southwest and will stay in a defined pathway and mix/diffuse a bit so the nitrogen level will go down. It will head toward the pond; it's not going to affect the entire neighborhood. The plume could flow underneath someone's well or above someone's well. The whole analysis of the neighborhood becomes site specific. If someone's well has issues right now, it's the local area and the issue is to find the cross connection and determine how that can be repaired.

Kathy Gagne asked if there was a way to encourage the Town to conduct a hydro-geology study of the groundwater around Pond Village to better understand how the 10-ppm coming out of the treated septic waste is going to evolve and flow through the neighborhood and the pond. Chair Hultin suggested she bring that question to the Select Board.

Elizabeth Sturdy read an emailed question from Mr. Steven Stahl. He asked, what if the nitrate levels are met, as has been described, leaving the property but there are homes that now in the Pond Village area have higher levels of nitrates above the Town set level of 3 ppm (where they never have before). How will that be dealt with? Chair Hultin does not believe the Town set level is 3 ppm. Health Agent Beebe explained that it's not a new standard, but if a water test level is above 3 ppm that is a trigger for communication with the home owner. She continued, stating they want to establish baseline water quality levels throughout the area and it's good some folks already have those test results. The results home owners have now are because of their own septic system and their neighbor's septic system (and fertilizer from lawns and most likely runoff). She doesn't believe it's an easy task, or even possible, to draw a correlation between the concentration of wastewater coming from one site and going to another site unless you have test wells. What's been proposed in the project is to treat the wastewater to a vastly higher degree than anyone else in the neighborhood. They should not be looking upstream but what's more adjacent to them.

David Kirschner stated that no one can tell the neighbors what could possibly happen, and they would very much appreciate a delay in any waivers regarding this, until there is a study conducted that can give them more comfort.

Laura English stated that as she understood it, when Senator Cyr obtained a grant (MassWorks Grant with the State), because it's a State grant there is a level of scrutiny involved from the Massachusetts Environmental Protection Agency to make sure there is no damage to the environment. There are a number of steps that need to be taken to submit to MEPA and she's wondering if that information is available. It should be public, and she would like to know where she can find that information. If that has not been done, what can be done to perhaps ask MEPA to come and do the geophysical studies? Atty. Huggins-Carboni does not know the status of any MEPA review of the project. She wonders if Mr. Malone would have any comment? Mr. Malone stated he was not aware of the status of MEPA review on the Town's application for the MassWorks grant. Atty. Huggins-Carboni will follow up with a status.

Regan McCarthy wants to be sure she understands how some of the “dots” have been connected. She feels the “Docs for Truro” report introduced something new. If it did not introduce something new, then she’d like to know how the ZBA arrived at their decision. Her understanding is that in addition to establishing that 5-ppm is outside of the EPA’s standard of 10-ppm is not only outdated but is the maximum limit of contaminant level that should be acceptable. If that was known to the ZBA and a waiver is being considered, how does the ZBA justify the delta that is incontrovertible between what the EPA allows (from a 60-year old standard) and what the science says is irrefutable? The newest thing that has come out of the “Docs for Truro” report are the links between fatal, and non-fatal, health concerns. These cannot be trivialized. She questioned whether the ZBA has heard all of this before, and if they have then how can they consider granting waivers on density and water contaminant levels when the evidence is clear on the serious harmful effects of doing so. Chair Hultin stated that this has all been discussed in public several times. He feels Ms. Regan is suggesting that there be zero growth in Truro because every septic in Truro adds to the problem. Ms. Regan thinks the cap should be set at 5-ppm.

Ron Fichtner invited the Board members to read the research documents within the “Docs for Truro” report in their packet. They are frightening and scary. He believes we have moved into a new area of awareness, perhaps in Truro, about the perils of nitrates in drinking water. He continued to go over EPA levels and Appendix B in the report.

Chair Hultin mentioned that he had a letter submitted by Mr. Clinton Kershaw which Chair Hultin summarized.

Chair Hultin officially opened the continued Public Hearing:

#### **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 25% 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.**

#### **Cloverleaf Update-Jarrold Cabral, DPW Director**

DPW Director Cabral wished to get back to a prior caller’s question regarding MEPA and the Grant. There was no MEPA requirement, no State permits were required. He continued with an update on the water line installation.

- The installation and associated site work will consist of 3 phases:
  - Watermain install from Shore Road to 22 Highland.
  - Connect Fire House Road under Route 6 to Cloverleaf property.
  - Install watermain from Northernmost area of Cloverleaf down to Highland Road.
- The roadway within the Cloverleaf will be rough cut in and stabilized with standard roadway base material.
- Erosion control will be installed before and after watermain installation.
- DPW will monitor Cloverleaf site with weekly site walkthroughs emphasizing erosion control, storm water management, and maintenance compliance with the environmental management plan. The project will then be transferred to Community Housing Resource Inc, and Ted Malone, as part of a lease agreement.
- Language in water main bid documents and contract documents will be specific regarding construction sequences, completion, supervision, and required meetings.

- Bid documents will be specific regarding erosion control, storm water management, and maintaining compliance with the environmental management plan throughout the project.
- Town will require a Project Manager, Project Superintendent and Jobsite Foreman.
- Meetings will consist of;
  - Initial construction kick-off meeting
  - Daily meetings with the DPW Director and Jobsite Superintendent.
  - Project team meeting every 2 weeks with Project Manager, Jobsite Superintendent, DPW Director and Town Consultant.
  - In the absence of DPW Director the Town's Health/Conservation Agent will attend meetings as needed.
- Means and method of installation and site work proposed by lowest responsive bidder will be submitted to and reviewed by Town staff and Town consultant.
- Specifics of roadway maintenance responsibilities will be specified in the lease.
- This portion of the Cloverleaf project is funded by a MassWorks grant, total estimated cost of construction is approximately 1.1M.

### **Waivers**

Chair Hultin thought it would be helpful to first have a general discussion on what's involved with waivers and how they are formulated, on what basis they are formulated, and what requirements they need to fulfill to be allowed.

Atty. Huggins-Carboni explained that part of the 40B process is to consider all the waivers asked for by the Applicant from all regulations, not just zoning. The ZBA acts in the place of other Boards for purposes of 40B. She proceeded to give guidance on the principles and process under which the ZBA considers requests for waivers of local regulations.

Chair Hultin wished to then go over the waivers to see what was before the Board. Atty. Huggins-Carboni started the review with the following;

- Relief from specific requirements of Article 14 of the Truro Board of Health regulations in excess of MA DEP Title 5 regulations. Article 14 is specific to nitrogen loading requirements.
- Another regulation which would need to be waived was Article 9: Innovative/Alternative Technology.

The greatest number of bylaw waivers requested have to do with zoning.

- Section 30: Use Regulations
  - 30.1(A): General Requirements. A waiver would be required to allow multi-family and two-family use.
  - 30.2 Use Table. A waiver would be required to allow a two-family or multi-family as principal uses.
  - 30.2 Use Table. A waiver would be required to allow an on-site management office, community room or storage as accessory uses in conjunction with multi-family use.
- Section 40.6: Growth Management
  - B. Residential Development Limitation  
Staff agrees that a waiver of Section 40.6 is required to allow the issuance to a single applicant of building permit(s) for the construction of 39 dwelling units. Staff believes that if a waiver is granted, the exemption in Section 40.6.C.1 is not relevant.
- Section 50: Area and Height Regulations
  - 50.1 Regulations
  - A. Table (Dimensional Requirements) The Applicant has requested side yard and building height waivers. Staff believes that at 170,320 square feet that does not satisfy

the Bylaw minimum lot size for a project of 39 dwelling units and that a waiver of 50.1.A is required to allow this density.

- 50.2: Building Gross Floor Area for the Residential District. As calculated by the Applicant, the Total Gross Floor Area of the project is 46,172 sq. ft. A waiver is required for construction of all Floor Area in excess of 5,568 sq. ft.
- Section 70: Site Plan Review
  - 70.3. Commercial Development
  - 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.
  - Applicant seeks relief from the requirements of Site Plan Review procedures and requirements; and, to allow the Comprehensive Permit to be issued in lieu thereof. Relief is requested from requirements, if any, to post a bond, cash, Letter of Credit, or impost Planning Board Covenants, related to site development.
  - Under G.L. c. 40B, a separate Site Plan Review process cannot be required. ZBA's review
  - of the comprehensive permit application substitutes for Site Plan Review under Section 70. The Board may conclude that its review has been consistent with Section 70.3, and that waiver of any remaining procedural or substantive requirements is warranted. The Board may wish to review the project's conformity with the Review Criteria/Design Guidelines of Section 70.3.F.
- Subdivision Rules and Regulations
  - Although the project is not a subdivision, it is residential development of a scale and impacts consistent with those of a subdivision. For this reason, many of the standards contained in the Rules and Regulations should be considered applicable to the project, and where noncompliant, waivers should be requested and considered by the Board. Section 3, Design Standards and Section 4, Specifications for Construction of Roads, and Appendix 2, Table 1 (Recommended Geometric Design Standards) are of particular importance.
  - Section 3. Design Standards
    - Section 3.6 Street Design
    - Waiver is required: Loop roadway is 1,060 +/- feet long.
  - Section 3.6.7. Adjacent properties
    - Waiver is required: Access road is within 25 feet of side line, adjacent to Unit 21 (east), 13 feet provided.
  - Section 3.6.8. Design Standards: Table 1 in Appendix 2 – Type C
    - Waiver is required: loop road has 14-foot travel way, with 1-foot berms provided (one-way traffic)
    - Waiver is required: 100 feet provided a Highland Road entrance; 50 feet provided within the site.
    - Waiver is required: Main Access Road 10% grade proposed.
- Section 4: Specifications for Construction
  - 4.1.8 Berms-Waiver is required: 12-inch berms proposed
  - 4.1.10 Vegetation-Waiver is required: Trees within the proposed limit of work line shall be removed as needed to allow for the construction of the development, beyond the edge of clearing for the roadway.
- Additional waiver requested: 2.5.4(c) Performance Guarantee-To protect the Town's interests and investment in this project, denial of this waiver is recommended.



Atty. Huggins-Carboni moved into the General Bylaws where she briefly touched upon the requested waivers from:

- Chapter 1, Section 8: Soil Removal
- Curb Cut Permit

The Applicant also requested relief from any other Bylaw that it might not have asked waiver from, just to make sure it has all the relief it needs. Atty. Huggins-Carboni feels that any relief sought should be specifically identified and considered by the Board.

The request for waiver of fees is something the Board has to think about.

Atty. Huggins-Carboni included one other area which is that the Planning Board had expressed its opinion that the Applicant needs a parking waiver for the project because some of the parking spaces are obstructed. The Board may determine the meaning of the Bylaw language and implications for the applicant's proposed number of spaces. If the Board finds that the number of parking spaces does not meet the Bylaw requirement, it may consider a (partial) waiver of the requirement.

She added that the Applicant has stated that the project will comply with the Lighting Bylaw, and if the Board deems that to be true, no waivers will need to be sought on that topic.

**Member Lucy made a motion to continue the Public Hearing for 2019-008 ZBA until 5:30pm on October 22, 2020.**

**Member Todd seconded.**

**So voted; 5-0-0, motion carries.**



**Respectfully Submitted,  
Noelle L. Scoullar**

