

# **Minutes of the Truro Board of Health, Tuesday October 19, 2021**

This was a remote meeting. Board members in attendance:

Chair Tracey Rose; Vice Chair, Jason Silva, Board members Helen Grimm, Brian Koll and Tim Rose. Also Present: Health and Conservation Agent Emily Beebe, DPW Director Jarrod Cabral, and Town Counsel from KL Law, Attorney Gregg Corbo. The meeting was called order at 4:39 by the Chair, Tracey Rose. The Chair announced the remote meeting procedures and described the process for public participation.

**PUBLIC COMMENT-** there were no public comments

Local Upgrade Approval for the Truro Motor Inn, 296 Route 6, (map 43, parcel 116) was filed by Jason Ellis of JC Ellis Design. Mr. Ellis was on the call to represent the owners, as was Attorney Dina Browne from Bletzer and Bletzer Law office, legal counsel for the owner of the property. The applicants were requesting two variances for the septic system design plan. Attorney Browne provided the Board with an overview of the variance requests and stated that the design was based on 44 bedrooms, which she recognized was an issue with the town. She stated that the property always had 36 units and 44 bedrooms, and had been licensed as a motel for approximately 30 years, with the exception of the last 2 years. There had been no new construction to add new bedrooms. She referenced a document from 1980 shared it on screen with the Board. She described the document, titled water survey, dated 8-18 1980 as showing the number of people served as 80. She also referenced an email that the Board received from the DEP regarding a 2003 water survey with a different population served. She stated that the presence of many inspectors in the establishment over time never resulted in another bedroom count.

The Chair thanked Attorney Browne, and asked Mr. Ellis for his presentation. Mr. Ellis described the proposed system: an Orenco AX 100, with 2-10,000 gallon tanks in series, followed by 2-separate recirculating tanks, the waste water would be pressure dosed into 8 trenches dosed at different times. He stated the design maximized the size of the system outside of the zone-I of the public water supply wells, and that currently there were 2-septic systems inside the zone-I of the wells. The application requested a 9-foot variance (10-foot separation required and 1-foot provided) for the leaching area in proximity to the lot line at Castle Road and an 8-foot variance (10 -foot separation required, with 2-foot provided) from the leaching area to the closest portion of the motel building foundation; there also was no reserve area provided.

Attorney Corbo asked Mr. Ellis what the wells zone- I radius were, and Mr. Ellis responded that they were shown on the plan and were 160 feet. When asked how the radius was determined Mr. Ellis said it was based on people, not bedrooms and said that he prepared the plan from Public water supply information provided by the DEP on the State information page for the well. Attorney Corbo stated that the 2003 survey DEP found the zone-I radius was 160-feet, the IWPA radius 488 feet based on 3960 gallons per day calculated from title 5 design flow of 36 bedrooms x 110 gallons per bedroom, from the 1979 chart. Mr. Ellis said he used the zone-1 radius provided by the DEP.

Attorney Browne raised an objection to Mr. Corbo handling questions like a trial.

The Chair asked Mr. Ellis about the variance request letter, regarding what distances were provided and what were requested. She framed the information discussed thus far, about the discrepancy of the design flow, the confusion about the zone-1 radius, and that the revisions to the plans before the Board were dated January 2021, but the variance request did not come until October 6, 2021.

The Chair asked the Agent to provide a review of the issues for the Board. The Agent described the non-community public water supply well; described the previous variance hearing for the septic upgrade; and described the current proposal filed under remedial use.

Board member Jason Silva thanked Mr. Ellis for the plans, and commented that he felt the review of variances for the septic system could not easily be separated from the other issues on the property.

Attorney Browne disagreed with Mr. Silva about the records of the town, and stated that the town has always known there were 44 bedrooms at the property, that the Agent knew this and had personally inspected them, and that now, to say there was a discrepancy was outrageous, and very disingenuous. She stated that there was no failure of the septic at the property, that the owners had not refused to have the system inspected, but that they chose to upgrade instead because it would have failed upon inspection.

Attorney Corbo responded, stating that the claim that this Board was disingenuous was absolutely false, defamatory and inappropriate for the hearing. He reminded the Board that the owners were in violation of a Court order, and had only just applied for variances for the revised upgrade plan when they were 2-weeks away from a pre-trial conference.

Attorney Corbo asked the Health Agent about the well radius that was shown on the plan and how it was calculated; he also asked about the requirement for a certified operator and if they had one for the water system. The Agent stated there had not been an operator for many months, and was unclear if one had been hired.

Attorney Corbo asked if the Agent had found any reference to there being 44 bedrooms on the property. The Agent had not. Board member Brian Koll asked a question about the application that was submitted, as it indicated "not applicable" to the length of time to complete upgrade; and further asked how long would it take for an upgrade such as this. The Chair commented that this was a point to be discussed when looking for conditions for approval.

Board member Jason Silva made a statement that he felt it was outrageous for a business not to submit their paperwork on time to run the Motel. As someone who ran a business he stated that it was outrageous that the occupants of the motel had to rely upon others such as himself to support their work to clean up the property because they knew the owners would not and the occupants did not want to get kicked out.

Attorney Corbo reminded the Board that they need to act on the application requesting variances from title 5, and consider if the plan was in compliance with title 5. He said that the bedroom count was significant as the proposed system was only approved for remedial use and can only be used when there is no increase in actual or design flow; that the approved design flow appears to be 36 bedrooms based on DEP records and there was no other apparent information in the record to support what was proposed; and that the system cannot be approved, based on the increase in design flow. He stated that the Board would be reasonable to find that the application proposed an increase in design flow, and the application could be denied for that reason. He also offered that as the Motel had been unlawfully converted from a seasonable, transient use to a yearround use, it had an increase in actual flow, and the proposed use of the system was prohibited. Attorney Corbo pointed out that as the septic system must have a certified wastewater operator, and, that it was apparent that the property owners have a poor record of keeping a certified water operator employed, it was therefore not likely that they would keep a certified wastewater operator reliably in place.

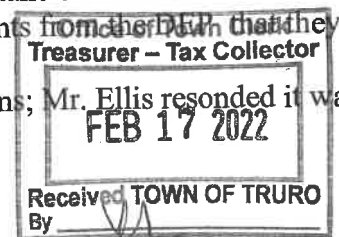
He stated that when reviewing the merits of the variance, to remember that the applicant was required to show that denial of the variance would result in manifest injustice and that they can offer a degree of environmental protection at least equivalent to what was required by title 5.

He suggested the Board deliberate and discuss, then move to approve or disapprove the application.

The Chair issued a brief statement of support for Board member Jason Silva's comment, stating that there were many businesses of Truro that follow the rules and keep people safe, and that it was not fair that some don't. She commented that the Board has regulations and they uphold them and the process to protect public health and the environment.

Attorney Browne made a closing statement about how the design flow was based on people per day; she also reminded the Board that she had asked them not to circle back and look at history, but rather look at the application in front of them; and last, that the 36 bedroom count was based on a mistake of 36 units versus 36 bedrooms. She referenced a conversation with the DEP legal counsel about documents from the DEP that they did not have at their disposal. They will share the 1980 document with the DEP.

Board Member Tim Rose asked Mr. Ellis if the system was designed for 36 bedrooms; Mr. Ellis responded it was designed for 44 bedrooms.



**Motion:** Board Member Tim Rose moved to accept the variances as presented; and give the applicant 6 months to put the system in from this date.

The Chair asked for a second; none was forthcoming; the motion died.

**Motion:** Chair Tracey Rose moved to deny the application due to the increase in flow for the proposed title 5, there was also not a certified water operator for the property;

**Second:** Board member Helen Grimm; **vote:** 3-0-2 with Tim Rose and Jason Silva abstaining. The motion carried.

Attorney Corbo suggested the hearing be closed by a vote.

**Motion:** Board Member Helen Grimm moved to close the public hearing;

**Second:** Board member Brian Koll; **Vote:** 5-0.

Request for waiver of time for property transfer and upgrade: filed by the Magna View Realty Trust, 139 Shore Road Rd, map 22, parcel 13; this matter had been continued from October 5. The Chair suggested that due to the high volume of real estate transactions, and delay for engineering services the Board of Health could accept a letter of contract if from an engineer stating that they had been retained. This could be in lieu of a full design plan at the time of waiver request.

The homeowner said that they had submitted a letter of retainer, and that a walk-through had been completed the previous day, along with the perc test. There was a question from Board member Tim Rose about whether the house was occupied. The homeowner said that they were staying in the house until the closing; the buyer offered clarity that there was no intention to live in the house until all the work on the septic was done.

**Motion:** Board member Jason Silva moved to accept the waiver of time with no occupancy until upgrade, and with 6 months from closing for installation;

**Second:** Board member Tim Rose; **Vote** was 4-0-1 with Tracey Rose abstaining; the motion carries.

Proposed Board of Health Regulation Amendments: A proposed amendment to Section 5, Article 6 would add "Bundled" Solid Waste/Recycling as a requirement for Commercial haulers. This request came from DPW Director Jarrod Cabral to increase recycling. The language in the proposed regulation amendment will require that Commercial Haulers change their offerings to their customers, with a bundled price. Homeowners would no longer have a choice to purchase only trash disposal, and could only be offered both trash disposal and recycling. Board member Helen Grimm felt that there was widespread apathy about recycling as it appeared that some folks believed that what they recycled was just being added to the waste stream and not actually recycled. The Agent asked the DPW director to describe how they police recycling through the Commercial haulers. Mr. Cabral described what happened when the commercial haulers came in to tip, and what they can tell based on the tonnage and when they view the tip. The Director has a number of tools that he uses to manage the requirements of the solid waste contracts and regulations.

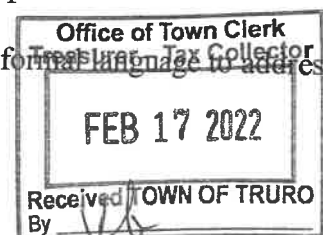
**Motion:** Board member Brian Koll moved to accept the proposal from the DPW director;

**Second:** Board member Helen Grimm; **Vote:** 5-0.

## DISCUSSION ON WATER RESOURCES

- 1) The Agent reported about the cesspool-upgrade program, as they were about to issue a second wave of letters, with 32% of properties having made progress toward the upgrade including having hired engineers, or schedule perc tests. The first round of letters went out in August, not certified, the second round will be the same but will ask engineers to inform the office when they were retained for a cesspool upgrade. Third round will be a certified mailing to a smaller group.

The Agent also reported that they had sent a request to Town Counsel for formal language to address extenuating circumstances; only 3 right now.



- 2) Cyanobacteria: Ryder Pond cleared after 2-rounds of sampling that showed reduction of the concentration of cyanobacteria. As this had been a first encounter with Cyanobacteria, much was learned about the need for a communication plan to educate the public and any direct users of a water body for the future; this will be a project with CCNS and with Wellfleet Health & Conservation. Cyanobacteria blooms can signal a nutrient imbalance in the water body, and because of the imbalance, and increased temperatures, certain species of plants and animals will change. These blooms, known as HABs – harmful algal blooms – will likely become more prevalent. Truro is fortunate to have less development around ponds than other Towns.
- 3) The Agent reported on a discussion with DEP about a possible alternatives analysis for Beach Point wastewater planning; the message from DEP was to scope alternatives for wastewater coupled with hydrologic investigations of various sites across Town. The present goal was to have a funding request for the next budget year for wastewater planning.

#### Health Agent's Report

The Agent has invited Gaby Sakolski, the lead entomologist with the Cape Cod Mosquito Control program, to attend the next meeting and present some slides about the program and the 2021 mosquito season, including the Duck Harbor overwash. There was discussion about the new malaria vaccine, and annual mortality, and also about Zika virus. Board member Brian Koll is an infectious disease Physician, and also handles bio-terrorism and emerging pathogens, and commented on the efficacy of the new vaccine.

The Agent informed the Board about a shift in the travel policy at Truro central school, and that following travels, families should conduct antigen testing and monitor family members for symptoms. Best practices were also reviewed for the upcoming holiday season, and it was suggested that the public should buy tests now in anticipation.

**Motion:** Board member Tim Rose moved to adjourn the meeting;

**Second:** Brian Koll, **Vote:** unanimously in favor

Minutes compiled by E. Beebe

Minutes approved 2/15/2022

