

**Town of Seven Devils
Board of Adjustment Meeting
Tuesday - June 22, 2021
5:30pm**

The Seven Devils Board of Adjustment met on Tuesday, June 22, 2021, and the format of the meeting was dual format via Electronic – Go To Meeting #464544581 and In-Person at Town Hall.

In-Person attendance included Regular members: Bob Bridges, Faye Brock, Jack Byrnes, Barbara Hurlbrink & Frank Sell. A quorum was met.

Alternate John Wells attended remotely with visible video display and observed. Alternate Bert Valery was absent.

Staff attendance included:

Debbie Powers, Town Manager/Zoning Administrator

David Poore, Town Engineer

Rob Angle, Town Attorney

The minutes were recorded by Town Manager Debbie Powers.

Also in attendance was Charles Clements – Applicant, Clevon Woods Associates, LLC.

1) CALL TO ORDER

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

2) ROLL CALL

Board of Adjustment members Frank Sell, Faye Brock, Bob Bridges, Barbara Hurlbrink, Jack Byrnes, and Alternate John Wells stated their name and announced their presence for Roll Call. A quorum was met.

3) ADOPT AGENDA

Member Brock made a motion to adopt the agenda; Member Sell seconded the motion. All members agreed.

4) OLD BUSINESS

A. APPROVAL OF MINUTES

(i) Board of Adjustment – Public Hearing - May 24, 2021

Member Sell made a motion to approve and adopt the minutes; Member Brock seconded the motion. All members agreed.

(ii) Board of Adjustment – Meeting – May 25, 2021

Member Sell made a motion to approve and adopt the minutes; Member Brock seconded the motion. All members agreed.

B. Clevon Woods Associates, LLC Application for Special Use Permit for WWTP

(A) Move Evidentiary Hearing out of Recess – Motion made by Member Byrnes, seconded by Member Brock; All Members agreed.

(B) Additional Disclosures – Chair Bridges remarked that he had been emailed a copy of the Sweeting Affidavit; hard copies are provided to the Members. No additional disclosures. No Party with Standing objected to any Board member participating in the Evidentiary Hearing.

(C) – Determination of Witnesses – two additional email public comments were received in the assigned 24-hour period immediately after the Public Hearing. These emails are accepted. Comment from the Chair: “During the Evidentiary Hearing one month ago, the Applicant submitted a sworn affidavit from Chad Vincent, a licensed real estate broker, to provide an “Expert Opinion” that the proposed use (meaning the WWTP) would have no detrimental effect of the adjoining Probst land, but would, if anything, increase the value of the Probst land; and that the proposed use will not seriously interfere with existing uses of adjacent properties (Probst and VestPockets); and that the proposed use will not substantially injure the value of adjoining or abutting property. The Chair disqualified the sworn opinion as “Expert” due to the omission of sufficient data and methods of analysis substantiating the opinion given. Mr. Clement disagreed with this action. I should have, at that time, had the Members of this Board vote on whether the Vincent opinion should be introduced into the record as “Expert”. I apologize to Mr. Clement and this Board for my oversight and would like to correct that omission now. It is my position that for an opinion to be considered “Expert”, such opinion must be supported by sufficient data and reliable methods. According to the Quasi-Judicial Handbook, even if an individual is qualified as an expert, he still must substantiate the expert opinion provided through sufficient data and reliable methods. An example is given that an appraiser needs to show the analysis used to establish the expert opinion about impacts to property values (page 41). Unsubstantiated opinions from real estate brokers would be no different than unsubstantiated opinions from qualified appraisers. While Vincent’s background would qualify him as an Expert, his unsupported opinion should not be introduced into the record as “Expert”. The same disqualification would occur if the situation was reversed...an unsubstantiated opinion from an equally qualified real estate broker stating that the proposed use would have a detrimental impact on adjoining property values should be disqualified for the same reason. From the Handbook, page 84: “Board cannot base a finding about property value impacts on opinion testimony unless it is offered by a qualified expert witness who has conducted a formal study of the potential impacts. Mr. Clement, I would like to give you an opportunity for rebuttal comments.” Mr. Clement stated that he takes no issue with this statement. Chair Bridges asked the Board to vote: “Should the Vincent opinion regarding the impact on adjoining land values be considered as “Expert” – Yes, it should be introduced into evidence as Expert Opinion, or no, it should not be introduced into evidence as Expert Opinion.” The Board then voted as follows: Member Sell-NO, Member Brock-NO, Chair Bridges-NO, Member Hurlbrink-NO, Member Byrnes-NO. Evidence is thus dismissed.

(D) – Witness Oath – no additional witnesses.

(E) – Witness Testimony – Mr. Charlie Clement – addressed the emailed comments received on this date. Submitted two affidavits – one from Mr. Tatum (a Party with Standing by virtue of his recent purchase of the abutting Probst property), owner of Grandfather Winery, who support this application:

second one from Mr. Sweeting, real estate appraiser. Mr. Clement pointed out paragraph 6, which points out that he (Sweeting) personally inspected the property. The UDO – Article 14 states that the burden of proof is on the applicant. Section F addresses the adjacent and abutting properties and the possibility of damage or injury to the owners. Chair stated that he would accept both affidavits into this case due to the fact that one is from a Party with Standing (Tatum) and that Sweeting’s background qualified him as an “Expert”, that he inspected the subject property, and had previously been qualified as an “Expert Witness” by the NC Superior Court. Chair did state, however, that the Board members would decide how much weight to place on the Sweeting testimony in its deliberations; Chair asked if the Members of the Board had any objections to the inclusion of the “Expert Opinions”; there were none. Chair asked the Board for any additional questions of Mr. Clement. Member Hurlbrink asked about the age of the tanks; Mr. Clement stated that the tanks sitting upon the property were previously used & purchased by Aqua, Inc. Mr. Clement said that the tanks are 25 years old but will be inspected by the State of NC. Member Hurlbrink asked who performs the periodic operational testing; Town Engineer responded that the State and the operator will test at least monthly, possibly on a weekly basis. Chair responded that it was his understanding that daily tests would be performed, and monthly reports go to the State. Member Brock asked about Acts of God & who would respond to the emergency. Mr. Clement stated that the operator would respond. Mr. Clement stated that the Town would not be involved in the daily or monthly monitoring or operations of the WWTP; this responsibility would lie on the operator or the State to inspect & test. Member Hurlbrink asked about the odor or stench that was mentioned in one of the Public Hearing emails; Mr. Clement responded that the Civil Engineer had addressed this issue by enclosing the plant in a building. Chair Bridges asked about the fencing plan, as there was a discrepancy between previous testimony and the Application; Mr. Clement responded that the application states that the fence will surround the building. Chair Bridges asked for any additional questions; there being none, Mr. Clement made a closing statement, which included the history of the permitting process starting back in the 1980’s. This project has been 40 years in the making. The State approved the permit & had to re-work the permit in 2017. Any permitting objections should go to the State. In this economic climate, it is time to move forward with plans. The old Carlton Gallery will be turned into a restaurant, the Speedway gas station will be able to cease pumping their tank & hook up to the WWTP. Grandfather Winery will be able to expand their business, and the 18-acre parcel owned by Clewon Woods Associates, LLC on Hwy 105 will be able to be developed. Burden of proof is on the applicant and sworn testimony has been provided. The six points in UDO Article 14 – Section 3 (f) were addressed. Chair thanked Mr. Clement for his comments. Chair asked for any additional testimony before closing the Evidentiary Hearing; there were none.

(F) – Close Evidentiary Hearing - a motion was made by Member Byrnes and seconded by Member Brock to close the evidentiary hearing. All Members approved.

(G) – Board of Adjustment Deliberations – Chair Bridges opened the Deliberations segment, explaining that this is a public discussion. Findings are:

- All required notices have been sent by the Town of Seven Devils to the related parties.
- The Application submitted by Clewon Woods Associates, LLC was complete with required documentation and fees.

- The Applicant submitted sworn affidavits from adjoining property owners (and others) attesting to their knowledge of the use of subject property as a Wastewater Treatment Plant (WWTP) and their acceptance of the use of the property for that purpose.
- The Applicant has been awarded a Permit as a Public Utility to discharge wastewater into the Watauga River by the State of NC, Department of Environmental Quality, Division of Water Resources, subject to effluent limitations, monitoring requirements, and other conditions. Said Permit is current at this time.
- Testimony from the Applicant's Expert Witness indicated that the proposed construction and operation of the WWTP will result in organic odors and mechanical noise, which will be abated by the enclosure planned to house the WWTP, an enclosure not required by State authorities. This opinion was supported by the Town's witness.
- Construction, Operation, and Reporting of the WWTP will be controlled by the State of NC. The Town of Seven Devils has no direct authority over the permitted operations of a WWTP. Any building housing the WWTP will be required to meet all the regulations outlined in the Unified Development Ordinance for the Town of Seven Devils.
- The Applicant specifically addressed the six requirements outlined in the UDO, necessary for a Special Use Permit to be issued.

The Board had no further additional findings to consider. Chair Bridges asked for deliberation comments from the Board:

Member Brock stated that the Expert Witness stated that surrounding property values would not be affected, she felt "property values would go down, based on her experience as a realtor."

Chair Bridges gave his opinion, stating that he "gives no weight to the Vincent and Sweeting Expert Opinion submissions relating to the negative impact on property values in the neighborhood as a result of the proposed construction of a Wastewater Treatment Plant, due to the complete omission of any data, surveys, formal study, or method of analysis to substantiate Expert Opinion. There is nothing for me to evaluate, other than just the opinion given. The Applicant has, however, submitted a sworn affidavit from abutting property owners, Vestpocket Investments, and Tatums (both Parties with Standing), stating that they acknowledge the intended use of the property, and that the proposed use would not create an impediment to the use and enjoyment of their property. The remaining Party with Standing, Blue Ridge Conservancy, provided no sworn testimony as to the case under consideration. Special Use Permits for a WWTP have previously been approved, and subsequently expired, by the respective Boards of Adjustments from Watauga County and the Town of Seven Devils, but on an abutting lot that is considered to be environmentally inferior to the current proposed tract. While prior decisions do not set binding precedents, and each individual case must stand on its own merits, similar facts should generally produce similar results. If this Board should reach a different conclusion than the previous decisions by Watauga County and the Town of Seven Devils, we owe it to the Applicant to explain why we reached a different conclusion. My original three concerns were 1) Discharge into the Watauga River, 2) Curb Appeal of the Project, and 3) Odors. The Town of Seven Devils has no control over the effluent discharged into the Watauga River – that is under the total control of the State of NC. The WWTP will be housed in a metal building, which is not a requirement for WWTPs, surrounded by a wooden fence on all sides, and properly landscaped. The building should abate odors and mechanical noises. As a landowner within the

Town of Seven Devils, the WWTP must comply with all Town Ordinances relating to hazards to the general health, safety, and welfare of the community. There was no opposition, with supporting evidence, presented in the Evidentiary Hearing which show that the Standards required to issue a Special Use Permit will not be met in this case. This Board has one duty to fulfill on this case – to determine if there is sufficient evidence to show that the Application for a WWTP will comply with the standards required for a Special Use Permit as outlined in the Town of Seven Devils UDO.” Chair asked for any additional comments before moving into a vote. Attorney Rob Angle stated that as a Real Estate Attorney, it is his opinion that it would be difficult to quantify more appraisal data than what was presented in the Evidentiary Hearing. Chair Bridges stated that he would have expected to see evidence of researched studies performed in collecting data on property values before and after the installation of a WWTP in similar situations, or at least evidence of appraisals conducted before and after by any “Expert Witness”. Town Attorney said he agreed with this in a residential setting, but not in a commercial setting, and feels that the Affidavit submitted by a Commercial Appraiser is more than sufficient. Chair disagreed and stated that each Board member will weigh all valid Evidence and make an individually informed decision.

(H) - Voting:

Chair Bridges recapped the six Standards that must be met; the Board of Adjustment shall issue a Special Use Permit, unless it concludes that one or more of the following is true:

1. The Application is incomplete.
2. The proposed use will be located, designed, and/or operated in a way that will endanger the public health, safety, or general welfare.
3. The proposed use will seriously interfere with the existing uses on adjacent properties, with the character of the area, or with the purposed of the zone in which it is proposed.
4. The proposed use will impose an undue burden in any public improvements, facilities, or services available to the area.
5. The proposed use will substantially injure the value of adjoining or abutting properties.
6. The proposed use will not be in general conformity with the Vision Statement, Comprehensive Land Use Plan, or other plans officially adopted by the Town Council.

Chair Bridges stated that if any one of these 6 points are TRUE, to vote NO.

Chair Bridges will entertain a motion to Approve, Approve with Conditions, or Deny the Application as presented. Town Attorney Rob Angle noted that there should be a vote on each of the six points, and then move to a motion to Approve, Approve with Conditions, or Deny. Chair Bridges agreed:

Question #1: The application is incomplete.

Member Frank Sell: NO

Member Faye Brock: NO

Chair Bridges: NO

Member Barbara Hurlbrink: NO

Member Jack Byrnes: NO

Question #2: The Proposed Use will be located, designed, and/or operated in a way that will endanger the public health, safety, or general welfare.

Member Frank Sell: NO

Member Faye Brock: NO

Chair Bridges: NO

Member Barbara Hurlbrink: NO

Member Jack Byrnes: NO

Question #3: The proposed use will seriously interfere with existing uses on adjacent properties, with the character of the area, or with the purpose of the zone in which it is proposed.

Member Frank Sell: NO

Member Faye Brock: NO

Chair Bridges: NO

Member Barbara Hurlbrink: NO

Member Jack Byrnes: NO

Question #4: The proposed use will impose an undue burden on any public improvements, facilities, utilities, or services available to the area.

Member Frank Sell: NO

Member Faye Brock: NO

Chair Bridges: NO

Member Barbara Hurlbrink: NO

Member Jack Byrnes: NO

Question #5: The proposed use will substantially injure the value of adjoining or abutting property.

Member Frank Sell: NO

Member Faye Brock: NO

Chair Bridges: NO

Member Barbara Hurlbrink: NO

Member Jack Byrnes: NO

Question #6: The proposed use will not be in general conformity with the Vision Statement, Comprehensive Land Use Plan or other plan officially adopted by the Town Council.

Member Frank Sell: NO

Member Faye Brock: NO

Chair Bridges: NO

Member Barbara Hurlbrink: NO

Member Jack Byrnes: NO

Motion:

The Board of Adjustment voted to Approve the Special Use Permit for a Wastewater Treatment Plant, as submitted in the Application. Motion was made by Jack Byrnes; seconded by Frank Sell, and all Members approved.

Member Frank Sell: Approve

Member Faye Brock: Approve

Chair Bridges: Approve

Member Barbara Hurlbrink: Approve

Member Jack Byrnes: Approve

Motion Passed with 5 ayes and 0 nays.

(5) – NEW BUSINESS – NONE. Chair Bridges thanked all the Members for all their hard work on this case, and the previous two cases processed in the past four months; Chair noting no further business, asked for a motion to adjourn.

(6) - ADJOURN

Member Brock made a motion to adjourn; Member Hurlbrink seconded the motion. All members agreed. The meeting adjourned at 6:40pm.



Robert D. Bridges, Chairperson



Debbie Powers, Town Manager/
Recording Secretary