

ALIGNING PBA COMMUNITY NEEDS & ISSUES WITH THE TOWN OF MASHPEE
Report issued to Bob Orsi, President of PBA
From Barbara Reilly, Task Force
9.6.20

Background:

Bob Orsi requested an initial assessment on what we could do to address key community issues that remain a challenge due to the complexity of being a private association.

Overview:

Popponesset is a beautiful community with 584 homes, primarily made up of seasonal homeowners (only 37% live in Poppy 10 months or more per year¹). The Popponesset Beach Association was set up in 1953 to help maintain beaches, roads and PBA owned structures (Community House) per the bylaws set forth at the time PBA was formed, as a result of purchase of the Popponesset Beach from New Seabury.

This special place has long been known as a family community, with homes being passed on generation to generation. Cottages that identified the area as a summer recreational area have been replaced by large full season homes, and the culture has begun to shift as more people have attempted to gain access to the beaches here from other areas. Teens who used to summer with their families here, and had many friends here, now bring in many other friends to visit. Homes are rented online with owners not really knowing who is renting – and many are now packed to the brim, often with college kids, not families. That composition, and lack of community interest, is beginning to create a party culture.

The increase in knock downs and re-building has impacted water quality, roads. The increase in people has impacted issues requiring additional security. We have bigger cars and more construction trucks on small roads, impacting safety. More people arrive with many cars, causing parking issues. The list goes on.

Adding to those issues, when trying to develop solutions, the complexity of our ownership composition, ie, a mix of residential with business merged together. In a very small area, we neighbor state, town and private ownership. Each has its own rules, yet all are impacted by the other.

With so much change in these areas 1) building (2) environmental (3) population and (4) infrastructure, and so many issues as a result of these changes, we need to take a step back to see if everything we are doing is keeping up with the times, and reflects the impact these changes have made on our community.

Problem Statement:

PBA, the association that manages roads, beaches and PBA structures, does not have any authority when it comes to many of these issues, especially building/zoning. In many cases, PBA must follow certain Town/State rules. There are also areas where PBA has decision making authority, with little ability to enforce, and because of our private status we often don't get the Town resources when needed. The goal would be to identify the key issues and then evaluate where we'd like to have better collaboration to improve issues our community is experiencing. The sum total of all areas identified for review are below:

- Zoning & Building, including driveway material
- Roads: Drainage, ROW management, No Parking and Speeding

- Security
- Environmental/Health Concerns, septic, Vista Pruning, Pond Maintenance, Pond and Ocean Water quality
- Beach rules, Hours, Dogs on beach
- Noise
- Rental Market (added due to COVID issues stemming from COVID, but was an issue before too)

Objective:

The focus on this particular report was limited to zoning/building as a first step. Our objective was to outline the key issues and then discuss what steps need to be taken. This was specific to the Popponesset Overlay District, a community made up of small lots, non-conforming structures, coastal banks, and all on septic systems. It needs to be noted that the PBA is not at all against development/rebuilding homes. The focus for PBA is doing so in a responsible way that conforms to Town requirements, enforcement of such regulations/rules and requesting change to address the change in our reality. The goal is to protect our community in a holistic way and not create new problems with building.

While this first step focused on zoning/building, many other issues are directly impacted as a result of this topic (water quality, drainage). In addition, some of the key learning and next steps at the end, can be applied to all topics. More to come on the others.

Considerations:

PBA has three major considerations when developing solutions to address macro issues:

- 1) **WE RELY ON MANY ENTITIES.** We have significant reliance on and/or involvement with the MPD, Town Manager, ConComm, Town Zoning and Planning board, Town DPW, Board of Health to name a few, for which we follow Town rules and regs, but no oversight or responsibility for their adherence. Lack of oversight in many of these leaves us without the ability to control our own outcome and we do not have the budget. Homeowners pay both town and state taxes and association fees and expect results.
- 2) **WE HAVE A COMPLEX ASSOCIATION STRUCTURE WITHIN OUR BOUNDARIES.** We have two associations that are not part of PBA, that reside within our PBA area. Wilsons Grove Association and Overlook Knoll Association are two streets in our neighborhood not in our PBA association.
- 3) **WE HAVE A UNIQUE GEOGRAPHICAL OWNERSHIP STRUCTURE.** We have multiple parties existing in/owning in and near our residential community, whose activities and decisions impact us, yet for which we have little control- The Spit, owned by Mass Audubon, Save Popponesset Bay and the state of MA. The Popponesset Marketplace, owned by Chris Burden, some of Sandy Beach and The Bluffs, owned by New Seabury, New Seabury (multiple associations, in and surrounding us).

Actions Taken to Gain Learning

- Talked with 10 homeowners who have built or lived near recent builds
- Met with Dan Fortier (intro by Mary Wagan from Mashpee) Town Planner, Dennis MA, responsible for many similar projects and issues
- Met with Evan Leher, Mashpee Town Planner – been there 2 years
- Met with Tom Pedula, former Mashpee Town Planner

- Discussion with Overlook Knoll and Wilson's Grove's homeowners' associations to understand similar concerns they have with zoning/building.
- Discussion with people involved with the Water Quality testing in Mashpee waters
- Conversations with PBA Homeowners (Qual not Quant)

Category	Specific Issue	Concerns	Management Responsibility of	Rules and Regs of	Key stakeholders
Zoning and Building	Raise and Replace Zoning not being followed closely	Septics are not sufficient, impacting water quality, home builds favor builders, not community, driveways do not have any oversight and causing drainage issues	Town Zoning, Town Planning, ConCom, BOH, Builders	Town	Zoning Planning DPW PBA
	Vegetation is being removed or cut on Pond and by beach without permission	If we don't follow up, Town does not follow up on these	ConCom	ConCom	PBA ConComm
Roads	No Parking	No enforcement	PBA	Town, PBA	PBA, WG, Marketplace, Ockway Bay, New Seabury
Roads	ROW	No clarity on usage, rules, maintenance, plantings etc...no process	PBA, Town	PBA, Utilities, Fed Gov, Town, State	PBA
	Drainage	Drains can't keep up with building	PBA, Town	PBA	Builders and homeowners
	Speeding	Too much speeding, no enforcement	Town, PBA	Town, PBA	homeowners
Security	Day and night time: Underage drinking and disturbances;		PBA	Town and PBA	SPB, MPD

	assaults Day time on beach: too many people on beaches in a residential community Non-rightful users increasing on PBA beaches				
Environment Health	Ocean Water Quality	Waters can be unswimmable, could bring home values down	BOH, Con Com, Clean Waters	BOH, Con Com	BOH, Con Com, Clean Waters, homeowners
Beach rules, hours, dogs	No enforcement, differing rules by owner		PBA and SPB	Town , SPB, State and PBA	Sate of MA, Mass Audobon, SPB, WG, OK
Noise	Unclear rules/regs on building noise, music, etc	There's no clear reg on when building can start and stop	Town	Town, PBA	Homeowners
Rentals	Policies and lack of oversight	Composition of renters is changing the culture, causing disturbances	Homeowner	Town	Town, Homeowners

WE ARE PART OF THE POPPONESSET OVERLAY DISTRICT.

The District was created at the request of Popponesset residents and the Association in 1993 to minimize the need for variances and prevent monster homes that were springing up, dwarfing the surrounding cottages. In 2017, An article submitted by the Planning Board amending the Zoning By-law to increase allowed lot coverage by structures from twenty percent (20%) to twenty five percent (25%) on lots that are 10,000 square feet or less in size or are in the Popponesset Overlay District. t is intended to allow construction of reasonably-sized houses on old small lots while reducing the number of variances requested. In this I need to add that the PBA Board did not “unanimously vote to support it” as it appeared and I have records in meeting minutes that indicate the representative at the meeting spoke without any authority to say that PBA supported it unanimously. It was supposed to be changed via a letter but never was. The Popponesset Overlay District (POD) boundaries are outlined at the end of this.

KEY LEARNING FROM CONVERSATIONS

With a focus on building/zoning, though this has relation to several of the issues.

Key Learnings from Poppy Homeowners:

We learned that homeowners are confused and those directly impacted are frustrated. Recent mega-home builds in Popponesset leave some scratching their head on how these homes could have been approved by the town. Overlook Knoll has a lawsuit underway with one, Wilson's Grove tried to fight one, and others were unaware until it was too late on others.

Higher elevations, extremely tall and long retaining walls, elevations that if unchecked will turn our roads into moats. The current approach feel as though it is more an ad hoc approach to approving new builds/renovations, one home at a time, not a master plan with a vision, nor a look at the overall impact all these builds are having on the look of the community, or the ramification on roads, run off, drains, neighbors views, culture etc.... An example of this is recent elevation increases on certain streets may cause other homes to have to raise their elevations to avoid drainage issues, and in doing so – it will create a river onto our already taxed drains. Roads will quickly go into disrepair. We have seen an increase in our drains not being able to handle the increase in run -off. The cost for the drain replace/repair falls squarely on PBA homeowners.

In addition, comments indicated some homes have no apparent ramification for not following appropriate septic perk test rules (full moon, high tide and highest elevation on property). We are seeing a massive water quality issue directly linked to high nitrogen levels and mostly this is septic related. Of all times to be vigilant with septic types and placement – this would be the time – we need to protect water quality. We need our Town to step in here. In addition to septic-run off, there is no oversight of fertilizer use, chemicals directly seeping into our ocean (it is not just homes closer to the ocean – all water travels towards the ocean).

One comment from a homeowner summed this whole thing up well – *“maybe a homeowner and builder adhered to all the town rules. Let's assume they did, but we have seen examples where they haven't. But did they really take a look around and say, I'm going to severely impact my neighbor and their view and the value of their home by doing this. Did they really care about the decimation of the trees and greenery and how important that is to the environment? You'd hope we'd have neighbors that would be good neighbors. But what you really hope for is that the town protects us by having homeowners adhere to the rules. Right now – we have neither. Everyone is doing their own thing for their own benefit. Bigger, more, push the boundaries. Forget the water, the environment, your neighbor”.*

Last, it was noted that Mashpee is letting things go, and building codes/rules are not being followed, and there is little oversight. Most of the builders who build in this area do not live in Popponesset so they do not have to live with it. No one on the Planning Board lives in Popponesset. In addition, a prevailing comment was our zoning and planning boards are stacked with people who are pro-build (builders, bankers, developers). As one person whom we interviewed stated *“Mashpee is crooked”.*

Key Learning From Experts

Dan Fortier, the Dennis Town Planner. Dan reviewed what Dennis has done with older neighborhoods like Popponesset and their Non-Conforming Structures on small lots. He also talked about how the town of Dennis created Environmentally Sensitive Zones, areas with a high water table or in the flood zone. (like much of Popponesset). He indicated it was a multi-year effort, but it required 3 things:

- 1) Input from homeowners
- 2) A public awareness campaign on why changes were needed
- 3) A multi-entity task force where every stakeholder was involved upfront and weighed in

Evan Lehrer, Mashpee Town Planner, had success in other areas with Form Based Code. And he thought Poppy would be a good place to apply Form Based Code. He noted Seaside in Florida as an example, and then went on to explain some of the basic principles such as "Character District", "Building Type", "Built to Line", "Master Plan." As examples, we could outline that all homes on the water need x type of septic system due to their proximity to the beach, or homes with x % grades require x type of driveway material, etc...and it limits and defines height restrictions, etc... so builders don't have a lot of choices to go astray.

Conversation with Tom Pedula, Former Mashpee Town Planner

It was discussed that Form Based Code may be better for communities that have land to build on. He suggested that Raze and Replace is sufficient if it was actually followed.

Overall Learning

We are in an environmentally fragile area, living among beaches that now-- at the hands of our own doing-- have compromised water quality, some of the worst in Cape Cod. We reside among fishing and bird friendly and nature protected areas (State Fishing, Mass Audubon and Save Popponesset Bay). We have two choices – to let things continue to the point of no return where beaches are unusable, roads become impassable and home values slide, or take an active approach now to address key issues.

SUMMARY/NEXT STEPS

- 1) We need to take a step back and review how our community has evolved, what's happening to our valuable beaches and roads. We need to review Raze and Replace and ensure it suits PBA needs and if not, alter it. And enforce it no matter what it ends up being. There is too much ad-hoc going on. Significant negative impact to water quality, drains and flooding, culture and neighbor impact (flooding, loss of views etc.)
- 2) We need a Public awareness effort, to help people understand what we are doing, all the steps we need to take and then again when we know what the rules and regs are
- 3) We need more effort to have homeowners be aware when building is going to happen that will impact them, only 35% of the population is here on a regular basis
- 4) We need more oversight and enforcement by the Town
- 5) Must collaborate with multi-entity task force (BOH, TP, entities impacted (associations) Con Com – it's the only way- set up a meeting with this group as soon as we can identify the request of them.
- 6) We need to encourage more Mashpee voter registration from Poppy homeowners.

ADDITIONAL INFO

Popponesset Overlay District Special Dimensional Requirements

¹⁸ Maximum height within the Popponesset Overlay District shall be thirty (30) feet, subject to the provisions of Footnote 4 of this table. Minimum lot size shall be 6000 square feet, minimum frontage sixty (60) feet, minimum building setbacks 25 feet front, 15 feet rear and 15 feet side and maximum of lot coverage twenty (20) percent.

History: Added 5-3-1993 ATM, Article 12, approved by Attorney General 7-19-1993.

History: Amended 5-6-1997, ATM, Article 46, approved by Attorney General 9-25-1997.

Other relevant Dimensional Requirements

¹⁹ These setback requirements shall not apply to the following building projections provided they do not exceed the sizes specified, as measured from the foundation line along a line perpendicular to the nearest property line: chimney projecting no more than three (3) feet, house overhang projecting no more than two (2) feet, roof overhang projecting no more than three and one-half (3 1/2) feet, and open decks or platforms used for egress projecting no more than four (4) feet. These setback requirements shall also not apply to stairs required as a means of egress, basement bulkhead of the hatch door type or handicapped access ramps on private property used solely for the purpose of facilitating ingress or egress of a physically handicapped person, as defined in MGL C. 22, §13A.

⁴ These height restrictions shall not apply to chimneys, water towers, skylights and other necessary features appurtenant to buildings which are usually carried above roofs and are not used for human occupancy nor to wireless or broadcasting towers and other like unenclosed structures, except that when any structure or portion of a structure is proposed to exceed forty (40) feet in height, construction shall require a Federal Aviation Administration (FAA) Determination of No Hazard or evidence of exemption for the determination process. Other than for those items excepted above, height shall be measured from the average original grade of the land adjacent to the foundation line of any proposed structure (prior to the clearance of the natural vegetation from said site) to any applicable point on a structure. Except for a traditional widow's walk of up to one hundred (100) square feet in area, roof decks will be permitted only if located directly on top of the first or second story of any building.

1. The boundaries of the Popponesset Overlay District shall be as follows:

Beginning at the northwest corner of Map 123, Block 162, as shown on the 1992 Mashpee Assessors' Maps, thence southeasterly to the shoreline of Nantucket Sound; thence following said shoreline northeasterly to the northeastern corner of Map 118, Block 14; thence northwesterly and northeasterly along the eastern property line of said parcel and of Map 112, Block 59B to the shoreline of Popponesset Creek; thence following the shoreline of Popponesset Creek to the southeastern corner of Map 112, Block 44; thence westerly along the southern property line of said lot to Shore Drive; thence northerly along Shore Drive and westerly along Strawberry Lane to the southeastern corner of Map 112, Block 100; thence northwesterly to the northeastern corner of said lot; thence southwesterly to the southwestern corner of Map 111, Block 139; thence northwesterly along the property line of said lot to Spoondrift Way; thence southwesterly along Spoondrift Way, northwesterly along Wading Place Road and southwesterly along Alma Road to the northern corner of Map 111, Block 187; thence southwesterly along a straight line to the western corner of Map 117, Block 236; thence, southeasterly along Nicks Trail and southwesterly along Uncle Percy's Road to the northeastern corner of Map 123, Block 187; thence generally southerly and easterly along the eastern property line of said parcel to the northern shoreline of Dean's Pond; thence following said shoreline northeasterly to the northeastern corner of Map 123, Block 54; thence following a straight line to the point of beginning.

History: Added 5-3-1993 ATM, Article 12, approved by Attorney General 7-19-1993.