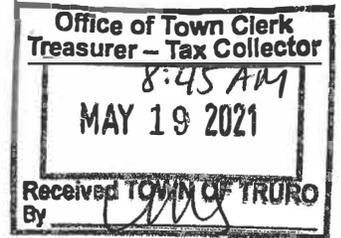




TOWN OF TRURO

P.O. Box 2030, Truro, MA 02666
Tel: 508-349-7004 Fax: 508-349-5505



ZONING BOARD OF APPEALS Agenda

DATE OF MEETING: Monday, May 24, 2021
TIME OF MEETING: 5:30 pm
LOCATION OF MEETING: Remote Meeting
www.truro-ma.gov

Open Meeting

This will be a remote meeting. Citizens can view the meeting on Channel 18 in Truro and on the web on the "Truro TV Channel 18" button under "Helpful Links" on the homepage of the Town of Truro website (www.truro-ma.gov). Click on the green "Watch" button in the upper right corner of the page. Please note that there may be a slight delay (approx. 15-30 seconds) between the meeting and the television broadcast/live stream.

Citizens can join the meeting to listen and provide public comment by entering the meeting link; clicking on the Agenda's highlighted link; clicking on the meeting date in the Event Calendar; or by calling in toll free at [1-877-309-2073](tel:1-877-309-2073) and entering the access code [575-484-717#](tel:575-484-717#) when prompted. Citizens will be muted upon entering the meeting until the public comment portion of the hearing. If you are joining the meeting while watching the television broadcast/live stream, please lower or mute the volume on your computer or television during public comment so that you may be heard clearly. Citizens may also provide written comment via postal mail or by emailing the Town Planner at planner1@truro-ma.gov.

Meeting link: <https://global.gotomeeting.com/join/575484717>

Public Comment Period

The Commonwealth's Open Meeting Law limits any discussion by members of the Board of an issue raised to whether that issue should be placed on a future agenda. Speakers are limited to no more than 5 minutes.

Continued Public Hearing

2020-009/ZBA – Anne Labouisse Peretz; William T. Burdick & Richard C. Vanison, Trustees, Dune House Nom. Tr. for property located at 112 North Pamet Road (Atlas Map 48, Parcel 1, Certificate of Title Number 208468, Land Ct. Lot # 7, Plan # 15097-H). Applicant seeks a Special Permit under M.G.L. Ch. 40A, §6 and Section 30.3(8) of the Truro Zoning Bylaw for removal and replacement of non-confirming single-family dwelling (height) on a non-confirming lot (street frontage). [*Material in 1/25/2021, 3/22/2021, and 4/26/2021 packets*]

- ◆ Request to Continue from May 24, 2021 to June 21, 2021 Meeting

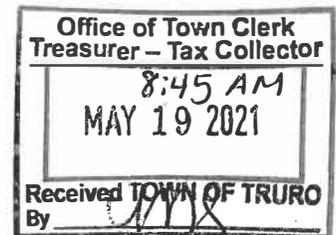
Approval of Minutes

- ◆ December 17, 2020 Cloverleaf Meeting
- ◆ January 7, 2021 Cloverleaf Meeting

Next Meeting

Monday, June 21, 2021 at 5:30 p.m.

Adjourn



From: [Benjamin E. Zehnder](#)
To: [Elizabeth Sturdy](#)
Cc: [Barbara Carboni](#); [Brad Malo](#); [Theresa Sprague \(theresa@blueflaxdesign.com\)](#); [dancosta@earthlink.net](#)
Subject: RE: Planning Board Meeting of 5/5 - Peretz
Date: Monday, May 17, 2021 11:49:31 AM
Attachments: [Extension Agreement 05-17-2021.pdf](#)

Hello Liz:

I am attaching a continuance agreement for the Board of Appeals to June 21 and am requesting that the Board continue the May 24 continued hearing to June 21. We are still awaiting a final plan from our architect for filing.

My thanks and regards,

Ben

Benjamin E. Zehnder
La Tanzi, Spaulding & Landreth
8 Cardinal Lane; P.O. Box 2300
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bzehnder@latanzi.com
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Accepting wire and disbursement instructions by email is dangerous, especially changes to those instructions. Verify by calling the originator of the email using previously known contact information prior to sending funds.

EXTENSION AGREEMENT – ZONING BOARD OF APPEALS

As applicant or as authorized agent on behalf thereof, I agree to continue the public hearing in the matter of Case No. 2020-009/ZBA seeking a special permit with respect to property at 112 North Pamet Road from May 24, 2021 to June 21, 2021 for hearing, and for board action through July 26, 2021.

Date – May 17, 2021



Signature of Applicant/Agent

Printed Name – Benjamin E. Zehnder as agent for
Anne Labouisse Peretz, Trustee

Filed with the Planning Department:

 5/17/2021
Name Date

Filed with the Town Clerk:

 May 17th 2021
Name Date

TOWN OF TRURO
ZONING BOARD OF APPEALS
Meeting Minutes
December 17, 2020 – 5:30 pm
REMOTE MEETING

Present (Quorum): Arthur Hultin (Chair); Fred Todd (Vice Chair); Chris Lucy (Clerk); John Dundas; John Thornley; Darrell Shedd (Alternate); Heidi Townsend (Alternate)

Other Participants: Barbara Huggins Carboni, Esq. – Interim Town Planner/Town Counsel, KP Law; Ted Malone – Community Housing Resource; John O'Reilly – Project Engineer; Jessica Snare – Architect; Mark Nelson – Horsley Witten Group

Members of the Public Addressing the Board: Pamela Wolff, Raymond Clarke, Scott Warner, Patti Bellinger, Karen Ruymann

Remote meeting convened at 5:30 pm by Chair Hultin.

Interim Town Planner/Town Counsel, Barbara Huggins Carboni, Esq., read the detailed instructions for citizens interested in watching or joining this meeting.

Chair Hultin turned the meeting briefly over to Clerk Lucy who made a statement to encourage citizens of the community to consider appointments to the different Boards and Committees of the Town. Chair Hultin stated that through involvement with the Cloverleaf process, citizen input has been heard which has led to major changes in what is being considered and thanked those involved for their efforts.

Public Comment

Chair Hultin recognized the two public comment letters submitted as part of the packet. Pamela Wolff discussed her letter regarding Water and read a brief statement expanding on that subject. Raymond Clarke, retired professor of marine biology, discussed his opinion on getting a hydrogeological study done. Scott Warner, Twine Field Road, asked about contingency planning and whether that would be addressed.

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.

Chair Hultin recited the **2019-008 ZBA – Community Housing Resource, Inc.** Public Hearing case description. Chair Hultin introduced the members of the Board attending the meeting as well as Mark Nelson, Horsley Witten Group.

Chair Hultin asked Mr. Nelson to reply to the idea of a hydrogeological study, the value of that, and what that would show. He also would like to discuss the quality of drinking water in Truro and the area. Chair Hultin also referenced the Weston Sampson Water Resources Plan done several years ago, 2014, regarding stormwater runoff and stormwater management which are key elements to controlling water quality and mentioned that the Applicant has addressed stormwater management adequately. Chair Hultin addressed effluent standard.

Mr. Nelson replied to Chair Hultin regarding his opinion on the feasibility of a hydrogeological study and the information that would be gathered. He stated that their initial task when asked to look at the peer review of this project was to conduct a hydrogeologic study. They had installed three (3) monitoring wells in the vicinity of Cloverleaf and downgradient from there with measuring points within the wetlands and the pond. Mr. Nelson explained the process, what was done, and what was found and stated that Horsley Witten continued to make recommendations for the wastewater treatment plant standard as new information was received. Mr. Nelson explained the system with further information including test well depths.

Karen Ruymann commented on current Board of Health testing and involvement and asked what else could be done prior to Cloverleaf. She mentioned the hydrogeological study and monitoring wells. Raymond Clarke asked about the Horsley Witten Report detailing what was found, etc. Mr. Nelson pointed out their report was submitted back in early March and discussed findings reiterating that their concentration was on Cloverleaf. Chair Hultin recapped the key points of the project and the Applicant regarding wastewater and stormwater management, and he also pointed out where the focus and responsibilities of the project lie. Patti Bellinger, Pond Village resident, offered comment regarding their expressed concerns but also wants the Board to consider a hydrogeologic study.

Attorney Carboni reviewed and summarized the changes to the Waiver document. Article 14, Board of Health Regulations, needs further review for waivers and a decision. Attorney Carboni also further described the Decision conditions, with Chair Hultin restating pertinent points. Member Shedd asked Attorney Carboni for specific further information regarding AMI and SHI.

Ted Malone stated that he and his counsel have been reviewing the Decision conditions and have some concerns regarding references to the affordability mix; he discussed those concerns. He stated those have since been revised based on the State Department of Housing and Community Development (DHCD) input since their initial funding round, and there have been changes in the Low-Income Housing Tax Credit Program which may also affect the mix. Attorney Carboni offered comment on the initial affordability mix presented to the Board and the current mix proposed by Mr. Malone. Attorney Carboni stated that the Board is granting considerable relief and would like Mr. Malone to provide more information on the income mix he is proposing and what the changes are; she would like the Board to review that as there is a lot of relief being granted because of the number of affordable units and the depth of affordability that was proposed to DHCD and the Board. Mr. Malone stated that after DHCD's review and the additional costs incurred to get this to move forward, we are not going to be able to include the seven (7) market-rate units. The numbers just don't work, and the State doesn't want any more than three (3) tiers of income eligibility. Chair Hultin stated at this time it is four (4) levels. Mr. Malone believes that

it is not necessary to restrict it as much as it is here and described why. Attorney Carboni restated that the Board's decision would be based on the affordability levels the project would offer. Attorney Carboni asked Mr. Malone to provide a summary of what he is now intending to build so the Board can consider whether it is willing to substitute that. Mr. Malone further explained the affordability mix. Chair Hultin stated that this seems to be more complex and that something should be submitted in writing to clarify the language; Mr. Malone stated he is working on this with his Counsel, Peter Freeman. Chair Hultin asked that included with this clarification should be an explanation of what has changed and that it be a timely submittal; Attorney Carboni agreed this revised/proposed affordability levels document be clear.

Further comments from Mr. Malone regarding what has been covered so far are related to how things might conflict with the State Department of Housing as the subsidizing agency regulating the project as well as the project financing. There is a level of detail that may conflict with the regulatory agreements drafted by the subsidizing agency. Also, Local Preference definition is not consistent with how the State defines it nor with how the Truro Select Board defines it. Chair Hultin asked Mr. Malone to further explain his statements relating to item numbers 33 through 38; Mr. Malone has recently been reviewing these with his Counsel and should be able to forward their comments to Town Counsel and the Board within a couple of days. Chair Hultin asked Mr. Malone to verify that he could have this information for the next meeting on January 7, 2021. Mr. Malone stated he could and that he would possibly have some discussion with Town Counsel. Attorney Carboni stated she would speak to the technical things with Mr. Malone and his Counsel and come back to the Board for input.

Attorney Carboni continued her review of the Decision, with explanation and discussion, at "Section III. Findings of the Board" found on page 4. At "Section IV. Waivers", Member Shedd suggested that the Board go back to Article 14 of the Waivers for further review/determination. Chair Hultin agreed this was the appropriate time to do so. Attorney Carboni stated that this has been updated with the latest comments from Mr. Nelson. Chair Hultin asked for further discussion from the Board and polled each member: Member Shedd noted that based on what the Applicant's engineer has provided for detailed drawings, and with improvements in the system, and especially with what has been heard from Mr. Nelson, he is in favor of agreeing to this waiver. Member Dundas agrees the waiver should be granted. Clerk Lucy stated he agrees with granting the waiver providing it can be reduced down to 5 ppm. Member Thornley had some reservations and suggested the Town do more before it be granted. Member Townsend also agrees as long as it is 5 ppm. Vice Chair Todd favors this waiver.

Chair Hultin agreed with the previous comment but did have a question regarding the contingency plan. He would like further explanation as to what is being proposed by the Applicant and what exactly that means. Mr. O'Reilly stated he addressed this question in his memo dated November 25, 2020, page 3 where he talks about the operation and maintenance plan along with the copy provided regarding the pilot approval. There were also 10 additions to the operation and maintenance plan listed on page 4 of the pilot approval. Mr. O'Reilly discussed these details with various questions being asked and answered. Clerk Lucy stated that he believed the Town Health Agent had reviewed this material and given her approval at a previous meeting. Attorney Carboni asked Mr. Nelson to comment as he had drafted some proposed conditions on wastewater treatment. Mr. Nelson discussed some of the contingency plans that Mr. O'Reilly put together and also those they are both looking into. Mr. O'Reilly then summarized his plan of action going forward. Board of Health involvement and review was also discussed.

Attorney Carboni suggested the Board defer to Mr. Nelson's advice on whether there is any condition this Board might want to impose on its own, or complementary to whatever the Board of Health might impose. Attorney Carboni asked Mr. Nelson if there were anything else this Board should think about and not defer to the Board of Health. Mr. Nelson stated the performance and monitoring of the system are two big parts of that, and he explained these reasons. Chair Hultin asked Attorney Carboni if there was an option now to create language for those conditions to be met. Attorney Carboni would prefer that Mr. Nelson amend his draft of the conditions to reflect exactly what he wants to say. The Board could make a decision on the waiver contingent on receiving a full set of conditions from Mr. Nelson and then review later. Chair Hultin stated that voting on this should be deferred until the Board has the next level of input and asked if this could be available at the next meeting date of January 7 which will have a full Board.

Returning back to the Comprehensive Permit Decision, Terms and Conditions, Attorney Carboni explained boilerplate language and the reasons for this particular language. Attorney Carboni then reviewed each numbered condition with explanation and detail. Chair Hultin particularly wanted further explanation to number 25 regarding Safe Harbor which Attorney Carboni explained in depth. Chair Hultin asked Attorney Carboni if there was a threshold when working toward the ten (10) percent when there are Safe Harbor provisions activated? Attorney Carboni spoke in detail about Safe Harbor.

Attorney Carboni reviewed the Profitability section and spoke about the regulations. The next section, Marketing and Local Preference, was added by Attorney Carboni in case the Board wants to include a local preference requirement. Attorney Carboni explained a Local Preference category and the language and definitions used. The Board was polled, and they are in agreement that local preference for Truro is important. Mr. Malone supplied more information on local preference applicants and stated that the Select Board would need to define 40B local preference policies further, per DHCD, as he believes there is to be more modification to their current definition. Member Dundas brought up the subject of different scenarios of local preference, possible hierarchy, e.g., fire/police/EMT, which were discussed. Attorney Carboni to inquire. Member Shedd offered his opinion that, referring to the comments from Member Dundas, he believes the Board should go for the maximum allowable local preferences.

The next section, Conditions Precedent to Commencement of Project, and forward, will be discussed at the next meeting. This will give everyone more opportunity to review and focus on the remaining sections, and more detailed information and clarification from the Applicant regarding the housing/affordability mix can be addressed at the next meeting. Clerk Lucy stated that there is a definition in the Bylaw for Truro Resident which is more extensive than mentioned and should be looked at which Attorney Carboni stated she would do.

Chair Hultin stated the next meeting would be January 7, but he wanted to poll the Members to see if they wanted to continue or adjourn. Vice Chair Todd asked Mr. Malone, through the Chair, if Mr. Malone had any other areas of concern, in general, with the revisions so the Board could get an idea of what would be reviewed at the next meeting even though they would not be discussed at this time. Mr. Malone stated that the past section regarding the lottery and the marketing plan will have comments as it is a potential area that is going to conflict with the regulatory agreements with the State; there is some redundancy with the land lease that the Town and Select Board will be drafting with him because of the maintenance and management requirements; they will have comments on the section management documents and agreements with the Town; and also on marketing and local preference. His Counsel, Attorney Freeman, has comments on timing and

process for the building permit vs final approvals which Mr. Malone needs to get clarified. Mr. Malone stated that Attorney Freeman is not going to comment on the waivers, it would be more the procedural and other areas mentioned.

Chair Hultin stated that a motion to continue to January 7 was needed. Member Thornley moved that this meeting be continued to the 7th of January. Vice Chair Todd seconded the motion. Chair Hultin asked the Board if further discussion was needed? There being none, Chair Hultin asked for a vote to continue to January 7 at 5:30 pm. Voted all in favor. So voted: 7-0-0. Meeting adjourned.

Respectfully submitted,

Elizabeth Sturdy

DRAFT

TOWN OF TRURO
ZONING BOARD OF APPEALS
Meeting Minutes
January 7, 2021 – 5:30 pm
REMOTE MEETING

Present (Quorum): Arthur Hultin (Chair); Fred Todd (Vice Chair); Chris Lucy (Clerk); John Dundas; John Thornley; Darrell Shedd (Alternate); Heidi Townsend (Alternate)

Other Participants: Barbara Huggins Carboni, Esq. – Interim Town Planner/Town Counsel, KP Law; Ted Malone – Community Housing Resource; John O'Reilly – Project Engineer; Mark Nelson – Horsley Witten Group; Leedara Zola – Truro Town Housing Consultant

Members of the Public Addressing the Board: Jason R. Talerma, Esq., Counsel for Pond Village Residents; Patti Bellinger; Susan Areson

Remote meeting convened at 5:30 pm by Chair Hultin.

Interim Town Planner/Town Counsel, Barbara Huggins Carboni, Esq., read the detailed instructions for citizens interested in watching or joining this meeting.

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.

Chair Hultin recited the **2019-008 ZBA – Community Housing Resource, Inc.** Public Hearing case description.

Public Comment

Chair Hultin recognized the public comment submittals to the Board. He also thanked the citizens for their contributions, as well as the Alternates on the Zoning Board as they were instrumental in making this process work. Chair Hultin asked Attorney Carboni to introduce Attorney Talerma and proceed from there. Attorney Carboni reviewed the letter received from the Concerned Members of the Pond Village Watershed Community and noted that a member of this community and their Counsel, Jay Talerma, were present at this meeting and would like the opportunity to speak.

Patti Bellinger, resident of Pond Village on Pond Road, commented on a letter that had been sent to the Board by herself and the group represented by Attorney Talerma. She reviewed their intent and interests and expressed they are very much in support of the Cloverleaf project. Their goal is

to make sure that the pilot program that is intended to be implemented will operate to an average of 5, and not above that, and want to make sure there is a very strong fail-safe backup plan in the event the system fails to perform at any point. Attorney Talerman stated that they support the Cloverleaf project, but the concern is that the system is a pilot system and is still being studied. Attorney Talerman addressed those concerns in detail and stated that a hydrogeological study should be done. He also discussed having a replacement system should the pilot fail.

Chair Hultin asked Mr. Nelson for a direct response to Attorney Talerman's comments. Mr. Nelson commented on the contingency plan/backup referred to by Attorney Talerman and explained in detail. Conditions for the contingency plan, which have been prepared by John O'Reilly, follow the State's requirements for approval of the technology and the Board of Health will also look at these conditions when the permit is brought to them for review and approval.

Chair Hultin asked Mr. O'Reilly to offer a response to Mr. Talerman's comments. Mr. O'Reilly stated, in agreement with Mr. Nelson, that it would not be a completely different system but rather perhaps an added system. Mr. O'Reilly further explained potential issues and resolutions and addressed the letter from the Pond Village Residents. He spoke to the manufacturer and asked for additional case studies on the type of system we are proposing which was forwarded to Mr. Nelson and Attorney Carboni late today. Mr. O'Reilly discussed the information contained in those studies in detail. He stated that ultimately it will be the Board of Health that reviews the operation and maintenance manual and to review the sampling and timing of reporting. Mr. O'Reilly cited Condition #85 which speaks to notification to the Board of Health and reporting to the State. Mr. O'Reilly addressed the flow chart contained in the Pond Village letter, and he recommended as a condition that a flow chart be added as part of the Cloverleaf manual which would be reviewed by the Board of Health during a public meeting so the public could also review it and discuss. Chair Hultin asked Mr. O'Reilly to further explain his comments regarding a flow chart. Mr. O'Reilly stated that the key component is the operator, and the operator should have input in preparing a flow chart for the O&M manual. Mr. O'Reilly further explained the role and authority of the DEP.

Chair Hultin asked Mr. O'Reilly about the maximum 5 ppm suggested earlier, since he believed a system like this could have variable rates. Mr. O'Reilly explained the BioMicrobics System when originally designed for 10 ppm and now with the new enhancements where it is designed to get to 5 ppm. Attorney Talerman reiterated the concerns of Pond Village residents but recognized the efforts of Mr. Nelson and Mr. O'Reilly to address them. Attorney Talerman still would like more due diligence toward the secondary assurance they are looking for.

Chair Hultin asked Mr. O'Reilly about similar technologies and pilot programs which are very tightly controlled by the DEP and carefully monitored. Mr. O'Reilly explained this system and the reason it was chosen including their customer support. Chair Hultin asked the Board for comment or if they wanted to direct questions to any of the speakers.

Vice Chair Todd asked Mr. Nelson if he had any further comments based on the discussion so far. Mr. Nelson stated that the overview of the technology from Mr. O'Reilly was good and wanted to point out that this is not brand-new technology – it has been used in many wastewater treatment facilities, many of them larger, and he believes the contingencies provide the added level of protection he has been looking for.

Member Dundas questioned Mr. O'Reilly asking about the manufacturer and their success/failure rate history with this system which Mr. O'Reilly detailed including DEP's involvement within a pilot program.

Clerk Lucy asked Mr. O'Reilly about the flow numbers which Mr. O'Reilly reviewed in detail as it relates to the design and the process.

Member Shedd reviewed the steps taken by the Board throughout this process, including retaining an independent third party to assess the system – The Horsley Witten Group – as well as improvements made along the way, and also involving the Cape Cod Commission. He also reviewed the water and septic issues in the Pond Village area.

John Thornley asked Mr. O'Reilly if in the event something needed replacing, how long would the system be down to make the correction? Not knowing specifics, Mr. O'Reilly stated that the conditions would outline procedure and he gave some examples.

Chair Hultin asked Mr. O'Reilly if all the components of this system were accessible – not under houses, structures, pavement, etc.? Mr. O'Reilly stated that every component that is installed can be dug up and has an access.

Member Townsend asked, as a follow-up to the Member Dundas question to Mr. O'Reilly regarding the pilot and the success rate, if it was possible to also determine how long those pilots have been functioning/active? Mr. O'Reilly stated that he can include that information in the materials he will be forwarding – this should be readily available from the manufacturer or the distributor.

Vice Chair Todd asked Mr. O'Reilly to clarify the list of “spare parts” that would be kept on site. Mr. O'Reilly stated that most of those components that would be on the surplus list would be items that would be in the treatment process themselves, e.g., a pump, and he described the notification process and operator replacement procedures.

Chair Hultin reviewed the Cloverleaf meeting process and the inclusion of public input along the way, stating that the Board has tried to move with the requests from concerned citizens to improve/change/upgrade this project, and he believes they have done their due diligence. They have been presented with much material and many issues repeatedly, and he believes they and the engineers have effectively addressed them.

Returning back to the Comprehensive Permit Decision, Marketing and Local Preference, and where it was left at last meeting, Chair Hultin asked Attorney Carboni to introduce Leedara Zola, Truro Town Housing Consultant, to address local preference and assist the Board with conditions. Ms. Zola stated that DHCD, the Department of Housing and Community Development, may approve a local preference, it is not automatic, and the Town has to provide documentation showing a local need. The local preference that may be awarded is for up to 70% of the units on the initial lottery, and there are defined categories as part of the DHCD guidelines: current residents, municipal employees, employees of local businesses, and households with children attending Town schools. Therefore, this is what can be requested. Attorney Carboni stated that there was a discussion this week with a Director at DHCD to confirm these requirements.

Attorney Carboni will rewrite the conditions so as to be compliant with DHCD requirements. Member Townsend asked regarding the guideline “employees of local businesses”, and since most of the Town is seasonal, do they count as a Truro resident for eligibility. Ms. Zola stated yes they do; however, this is year-round housing and leases are for a year.

Attorney Carboni stated that, at the last meeting when Mr. Malone mentioned that he might have a different unit mix, a change, the Chair asked that Mr. Malone go into more detail at this meeting. Attorney Carboni suggested that the Board hear from Mr. Malone at this time and then Ms. Zola

for any comments she might have on this subject.

Mr. Malone explained what was being proposed and further explained the process and steps taken. DHCD has stated to the applicant that they were uncomfortable with the multiple tiers of income eligibility and the feasibility of managing that process as well as concern that the low-income housing tax credit investors, who were expected to attract the funding of the project, were getting less comfortable with mixed income suggested in general. Mostly due to the COVID uncertainties. The applicant was told that when they came back, they should be limiting their income tiers to three (3) income levels; originally there were five (5): 30% of median income, 60% of median income, 80% of median income, 100% of median income, and market rate. The applicant followed the income mix outlined in the RFP, but that was 2½ years ago and DHCD has changed their position on that, even though DHCD approved the project eligibility letter and income mix. They want the applicant to submit just the three (3) income tiers. Mr. Malone is pursuing with DHCD the inclusion of the market rate units with the income tiers as he believes the market rate units and multiple-income levels are important. They have up to 100% approved for a number of units, but the way the finances come together for the project, the mix of those affordability levels – Mr. Malone needs the flexibility to adjust those based on where the subsidy funding is available through DHCD. Mr. Malone was going to ask the Board to consider limiting the income eligibility restriction just to 50% of the units below 80% as, when read, the case information states “not less than 25% or 10 units shall be restricted”. If the Board were to have the Decision read 50% below 80%, this would not interfere with the income mix that we end up with. DHCD has already stated that they can have a 100% category that will serve people at 80 and up to 100%, but the specific numbers were included in the project eligibility letter based on the mix that Mr. Malone could demonstrate as feasible to DHCD two years ago. Project costs have increased, and certain funding sources have not yet been secured. He does not want to have to come back to the Board for revision because the restriction was written in such a way that it tied us too tightly and took away the flexibility for making that income mix work.

Lastly, Mr. Malone stated he informed DHCD that he already has investors interested who understand the Outer Cape market and that market rate units would not give them concern. Mr. Malone stated his commitment is to have an income mix like it was originally laid out, but it is possible different funding sources may be needed. More MassWorks money would make for a different income mix. If the Board could decide for a minimum of 50% for 20 units up to 80% of median and another 15% for 6 units restricted to 100% of median, then 35% would be wiggle room to work with the funding sources and assemble a unit mix income tiers that is acceptable. Until Mr. Malone has confirmation from DHCD, he cannot commit to the market rate and is concerned about that not being in this Decision.

Chair Hultin stated that they would want to review that, and asked Mr. Malone how the market rate units would be addressed. Mr. Malone stated that the Town can fine-tune that as part of the land development agreement but not as part of the 40B. The lease agreement will reflect both this Decision and the objectives of the Town, so there is another forum once financing has been identified and approval has been received for the market rate units. Chair Hultin reiterated that market rate units are a key component of this Decision and does not want it left up in the air.

Sue Areson, a member of the Select Board but not speaking for the Select Board, stated that the Town signed a Development Agreement with Mr. Malone that had the development mix in it. Since it has changed, the question was posed to Mr. Malone if it now needs to go back to the Town as a new and different development agreement and would the Select Board have an opportunity to

weigh-in on the mix of units? Mr. Malone answered stating that currently they have a Land Development Option Agreement, and it is the precursor to the actual Land Development Agreement and the Lease, because the Town will own the land, so negotiation of the lease is still pending, and it would go back to the Select Board. Attorney Carboni reviewed the steps taken thus far and reiterated that this Board still needs to determine what the unit mix will be that they vote on.

Member Shedd asked Mr. Malone for further information on what he would consider acceptable for market rate units. Mr. Malone explained his thoughts on the mix and restated that if DHCD won't fund the project with market rate units, he would need to come back to the Zoning Board and the Select Board for a revision. He further explained his position. Attorney Carboni restated that the Board could decide based on local needs and put language in the Decision expressly stating that if DHCD does not approve then the applicant could come back to request an insubstantial change. At the request of Chair Hultin, and a further request for information from Member Shedd, Attorney Carboni reviewed the steps necessary to do this with a detailed explanation of the process.

Vice Chair Todd asked for more information on the low-income aspect of the mix which Ms. Zola addressed. She reviewed Truro's past success in advocating for its needs, and she believes that if the Town feels strongly, it should pursue what it wants but recommends that on income levels it should not specify levels – give a range instead, and she offered examples of language that could be used. Ms. Zola explained the history behind this process. Chair Hultin asked Attorney Carboni how to proceed, and Attorney Carboni explained her procedure recommendations to the Board. Mr. Malone described how the low-income housing tax credits program is involved with the unit mix as well as DHCD funding.

Member Thornley suggested a document clearly presenting these numbers would be helpful in further discussion, which was agreed. Chair Hultin recognized Ms. Zola for further comment. She stated she agrees with Mr. Malone, and Mr. Malone needs a lot of funding to make this work. He needs the flexibility to finesse this to best meet what the funding sources are asking. Ms. Zola also suggested that rather than using numbers/percentages, think of this in terms of wording and separate each into a category, such as: low to moderate income, middle workforce income, and the unrestricted.

Chair Hultin stated his personal view behind market rate units. He thinks of this more as community housing than income-restricted housing. Vice Chair Todd agrees with the Chair's thought regarding market housing and the original vision for this development. He also agrees with Member Thornley that it would be helpful to have a table/matrix showing the breakdown. Chair Hultin offered to Mr. Malone that he recognizes the original mix was done a few years ago and things change. That will all be taken into consideration. He wants Mr. Malone to have the flexibility but doesn't want anything eliminated later and determined elsewhere.

Member Shedd agreed with Chair Hultin regarding market rate units being desirable, appreciated the input from Mr. Malone and Ms. Zola, but had questions regarding workforce and median income levels. Ms. Zola stated the Barnstable County 2020 Urban Housing Development Income Limits and read some family-based numbers. She stated a previous table could be updated showing the income limits at the different qualification levels with the rental rates also included. The Board agreed it would be beneficial to have this data.

For viewing, Attorney Carboni shared the Comprehensive Permit document and reviewed some of the changes/updates from the last meeting, which the Board commented/discussed. The next

section for review, Conditions Precedent to Commencement of Project, are the steps to the actual permit mostly having to do with reviewing plans for consistency with the Decision, compliance with regulatory schemes, and review of stormwater operations and maintenance plan. These conditions ensure that things happen in the order they are supposed to and that appropriate personnel are involved.

#42 and #43 possibility of Horsley Witten being Board's consultant. Because there will be site disturbance from the Town prior to commencement of construction, continuity of on-site consultant ensuring compliance during the different stages important. #47 Counsel for the Applicant and Attorney Carboni discussed but disagree. Attorney Freeman believes the Board cannot comment on this section; however, Attorney Carboni believes the Board is a party to the Regulatory Agreement and can comment so further discussion is needed. Mr. Malone stated that the Town is going to have a Regulatory Agreement related to the Comprehensive Permit, but there is a Regulatory Agreement that is from the subsidizing agency that encompasses all the relevant restrictions governing regulations for the subsidy funds. There will be multiple Regulatory Agreements and cannot have conflicting documents plus the monitoring agent is usually the subsidizing agent. Mr. Malone stated that his Counsel and Town Counsel will review this language. Attorney Carboni stated that sometimes DHCD designates a monitoring agent but that she would work on this with Counsel and Ms. Zola. Mr. Malone had a comment on #50, SWPPP. The plan that was submitted to the Board was just a draft; the final plan has to include the applicant's contractor, and the Town engages one as well. What was originally submitted by John O'Reilly will be the model. Attorney Carboni will add "final SWPPP" to the second sentence for clarification.

The next section for review is Conditions Prior to Application for a Building Permit, #55. Chair Hultin questioned six sets of plans for the Building Department; need to check with them. #56, according to Mr. Malone, happens when a construction contract is signed. Attorney Carboni will work with the applicant to see which items can reasonably be deferred and clarify language. Attorney Carboni stated that prior to the applicant's construction, site disturbance will occur by the Town and wants these points identified. She needs to modify the Decision to reflect the fact that these are Town requirements prior to applicant construction, not before Town site disturbance. Attorney Carboni will also discuss with the Town DPW Director, Jarrod Cabral.

The Conditions Relating to Construction section, #57, was language written by Mr. Cabral. #58, hours of construction, was discussed. Mr. Malone felt that these hours were too constricting, especially during the summer months and if there would be no impact such as with interior work. The Board determined that 7:00 am until 7:00 pm, 6 days per week, no Sunday activity, would be acceptable. At #66 from Mr. Cabral and Emily Beebe, Conservation Agent, regarding soil removal from the site for beach nourishment, Mr. Malone stated that from his perspective this does not change anything.

At #68 Attorney Carboni inquired of Mr. Malone if there was a commitment to solar panels on the duplexes? Mr. Malone stated that there is a Cape Light Compact award for HVAC if they install solar on all of the buildings. However, the small duplexes might not have the area needed. Vice Chair Todd pointed out that in previous conversation it was stated that the buildings would be solar ready.

At #71 Attorney Carboni stated that she needs to work with the applicant and applicant's Counsel to rewrite this condition to read requires As-Built Plans building by building.

Going back to #61, Member Dundas asked if, regarding the utility and infrastructure, it would be commercial line or Open Cape or a combination of both. Mr. Malone stated that all utilities would be run underground; each renter would apply for their own cable/internet service. As for “smart home” construction, that level of electrical detail has not been completed but will be considered.

#72 Vice Chair Todd asked about this condition in the Decision. Attorney Carboni stated the agent is typically a Planner/Planning Department involved with the project working in addition to the Building Inspector to review for consistency with the Decision. Attorney Carboni sees it as helpful to the Building Inspector. Vice Chair Todd believes the last part of the sentence is too vague, and the rest of the Board would like this condition removed entirely. Mr. Malone also suggests that the next condition, #73, also be removed as he believes it is the responsibility of the Building Inspector, and the Board agrees with its removal. #74, per Mr. Malone, will be modified further to allow for some additional plants, but no real difference to what is written.

In the section on Wastewater Treatment, Attorney Carboni stated the reason for the deletions is that they are replicated in Mr. Nelson’s conditions, and Mr. Malone furthered that these were all acceptable to Mr. O’Reilly. Chair Hultin stated that they are going over these conditions quickly now, but they will need to be reviewed carefully at the next meeting to make sure there are no objections. Board agreed. Attorney Carboni stated that this section contains more detail than they had before about monitoring and the technical requirements, but not different in concept. Chair Hultin stated that most of these details are specified in the plans. #85 speaks to the contingency plan, and the Board needs to determine if they find this to be sufficient. Vice Chair Todd stated that he assumes this language is consistent with anything in the DEP Piloting Manual. Attorney Carboni stated that Mr. Nelson’s language is inherent with the DEP Pilot Approval Process. Vice Chair Todd offered that the DEP materials are very stringent and explicit.

Administrative, the next section, is boilerplate language for this type of comprehensive permit process. At #91, Attorney Carboni reviewed the Cost Certification process, which is peculiar to 40B. After the project is constructed, DHCD farms out review of the project construction and the costs associated. They do a Cost Certification, which is not an audit, but a process DHCD uses to determine the profit of the project to ensure that the limited dividends of 40B are adhered to. #92 language at the beginning of this condition is per Mr. Cabral, and this language will also be in the lease that is negotiated. Mr. Malone does not believe that the three (3) years [best case scenario] stated in condition #93 is enough time, but after clarification and discussion with the Board, he agreed to let the language stay as is.

At #94 Chair Hultin asked Mr. Malone if he had any timetables for the Board. Mr. Malone stated they are looking at an 18-month construction schedule from start to finish, and the rest is funding commitments and closings. They are outside the three (3) year mark at this point. Condition #95 was discussed as to its intent, and source verification of allocated Town funding would be confirmed. #96 through #99, and #101 boilerplate language explained. #100 and Springing Regulatory Agreement [KP Law term] explained by Attorney Carboni.

Member Shedd asked Attorney Carboni, regarding the Regulatory Agreement, does it mean that whatever housing mix decided upon within this Comprehensive Permit remains intact in perpetuity? So, if there is a change of hands this unit mix remains the same as it was under the original agreement? Attorney Carboni replied that a specific unit may not remain at the same affordability level as they may move around depending on occupancy. The unit mix is whatever DHCD has committed to through the Regulatory Agreement; the Town’s preference is in the

Comprehensive Permit. This section provides that ultimately what is approved for unit mix in the DHCD Regulatory Agreement is the same as in the Town's Regulatory Agreement. In 40B, in perpetuity means "for so long as the project does not conform to local zoning".

Ms. Zola wanted to revisit #93 and stated she believed it was three (3) years from start of construction as in 760 CMR. Attorney Carboni checked this reference online, and Chair Hultin stated that if this language is part of the Regulation, we should use it. Attorney Carboni copied this Regulation language, 760 CMR 56.05(12)(c), into Condition #93 and also noted as otherwise provided in the Regulation.

With the exception of Mr. Nelson's section still needing review, Chair Hultin asked if an updated document could be sent to the Board early next week for review as it is complex. Attorney Carboni asked if Waiver of Article 14, Board of Health Regulations, would be voted on next week as well. Chair Hultin polled the Board and voting on this Article will take place next week. Mr. Malone and Ms. Zola will get something to the Board for review on the housing mix for next week's meeting.

Chair Hultin stated that a motion to continue to next Thursday, January 14th at 6:30 pm was needed. Member Thornley moved that this meeting be continued to Thursday, January 14th, at 6:30 pm. Chair Hultin seconded the motion. Chair Hultin asked the Board if further discussion was needed? There being none, Chair Hultin asked for a vote to continue to January 14 at 6:30 pm. Voted all in favor. So voted: 7-0-0. Meeting adjourned.

Respectfully submitted,

Elizabeth Sturdy